

Companies Act, 2063 (2006)

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1. Some Nepal Act (Amendment) Act, 2064

2064.5.9 (26 August 2007)

Act Number 18 of the Year 2063 (2006)

An Act made to amend and consolidate the law relating to companies

Preamble: Whereas, it is expedient to amend and consolidate the law relating to companies in order to bring about dynamism in the economic development of the country by promoting investment in the industry, trade and business sectors through economic liberalization and make the incorporation, operation and administration of companies much easier, simpler and more transparent;

Now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063 (2006).

Chapter 1

Preliminary

1. **Short title and commencement:** (1) This act may be called as the “Companies Act, 2063(2006)”.

(2) This Act shall be deemed to have come into force on 20 *Ashwin* 2063 (6 October 2006).

2. **Definitions:** In this Act, unless the subject or the context otherwise requires,

(a) “Company” means a company incorporated under this Act.

(b) “Private company” means a private company incorporated under this Act.

(c) “Public company” means a company other than a private company.

(d) “Holding company” means a company-having control over a subsidiary company.

- (e) “Subsidiary company” means a company controlled by a holding company.
- (f) “Foreign company” means a company incorporated outside Nepal.
- (g) “Listed company” means public company which has its securities listed in the stock exchange.
- (h) “Company not distributing profits” means company incorporated under Chapter 19 on conditions that it shall not be entitled to distribute or pay to its members any dividends or any other moneys out of the profits earned or savings made for the attainment of any objectives.
- (i) “Promoter” means a person who, having consented to the matters contained in the memorandum of association and the articles of association to be furnished in the Office for the incorporation of a company, signs the same in the capacity of promoter.
- (j) “Officer” includes director, chief executive, manager, company secretary, liquidator and any employee undertaking departmental responsibility of the company.
- (k) “Memorandum of association” means the memorandum of association of a company.
- (l) “Articles of association” means the articles of association of a company.
- (m) “Prospectus” means a prospectus to be published by a company pursuant to Section 23.
- (n) “Share” means the divided portion of the share capital of a company.
- (o) “Preference share” means a share issued as a preference share pursuant to this Act.
- (p) “Ordinary share” means a share other than a preference share.
- (q) “Bonus share” means a share issued as an additional share to shareholders, by capitalizing the saving earned from the profits or the

reserve fund of a company, and this term includes the increase of the paid up value of a share by capitalizing the saving or reserve fund.

- (r) “Shareholder” means a person having ownership in the share of a company.
- (s) “Debenture” means any bond issued by accompany whether putting its assets as collateral or not.
- (t) “Debenture trustee” means a body corporate undertaking the responsibility for the protection of interests of debenture-holders at the time of issuance of debentures by a company.
- (u) “Register” means a register of shareholders or debenture-holders maintained under Section 46.
- (v) “Seal of company” means the seal of a company to be used by it.
- (w) “Securities Board” means the securities board established under the prevailing law to regulate and manage securities.
- (x) “Securities” means any shares, bonds, debentures or stocks issued by a company, and this term includes the receipt relating to deposits of securities and the rights and entitlement relating to securities.
- (y) “Director” means any director of a company and this term includes any alternate director.
- (z) “Board of directors” means the board of directors of a company.
- (z1) “Managing director” means a managing director of a company.
- (z2) “Premium share” means a share so issued by a company as to sell it for a value in excess of its face value.
- (z3) “Net worth” means the assets of a company remaining after deducting the paid up capital, reserve, fund or free reserve of whatever designation to which shareholders have right or all other liabilities other than goodwill, if any, of the company as well as loss provisions , if any, from the total assets of the company for the time being.

- (z4) “Consensus agreement” means an agreement made unanimously by all the shareholders of a private company existing for the time being in respect of the operation of the company.
- (z5) “Office” means the Company Registrar’s Office set up by the Government of Nepal for the administration of companies.
- (z6) “Register” means the Registrar of the Office.
- (z7) “Independent director” means any independent director appointed under Sub-section (3) of Section 86.
- (z8) “Court” means the commercial bench of a court specified by the Government Nepal by a notification in the Nepal Gazette, with the consent of the Supreme Court.
- (z9) “Close relative” means a partition shareholder in joint family or husband, wife, father, mother, mother-in-law, father-in-law, elder brother, younger brother, elder sister, younger sister, sister-in-law ,(elder or younger brother’s wife), brother-in-law , sister-in-law, brother-in-law, (husband of elder sister), uncle, aunt, maternal uncle, maternal aunt, son, daughter, daughter-in-law ,grand-son, grand-daughter, grand-daughter-in-law or son-in-law .
- (z10) “Prescribed” or “as prescribed” means prescribed or as prescribed by the Government of Nepal by a notification in the Nepal Gazette.

Chapter 2

Incorporation of Company

3. **Incorporation of Company**: (1) Any person desirous of undertaking any enterprise with profit motive may, either singly or jointly with others, incorporate a company for the attainment of one or more objectives set forth in the memorandum of association.
- (2) There shall be a minimum of seven promoters for the incorporation of a public company.

Provided, however, that seven promoters shall not be required for the incorporation of another public company by any public company.

(3) Notwithstanding anything contained elsewhere in this Section, a company not distributing profits may, subject to the provisions contained in Chapter-19, be incorporated for the attainment of one or more objectives.

4. **Application to be made for incorporation of company:** (1) Any person desirous of incorporating a company pursuant to Section 3 shall make an application to the Office, in such format and accompanied by such fees as prescribed, and along with the following documents, as well:
- (a) The memorandum of association of the proposed company,
 - (b) The articles of association of the proposed company,
 - (c) In the case of a public company, a copy of the agreement, if any, entered into between the promoters prior to the incorporation of the company,
 - (d) In the case of a private company, a copy of the consensus agreement, if any, entered into ,
 - (e) Where prior approval or license has to be obtained from anybody under the prevailing law prior to the registration of a company carrying on any particular type of business or transaction pursuant to the prevailing law, such approval or license,
 - (f) Where the promoter is a Nepalese citizen, a certified copy of the citizenship certificate and where a corporate body is a promoter, a certificate of registration of incorporation, decision of the Board of directors, regulating the incorporation of the company and major documents regarding incorporation.
 - (g) Where the promoter is a foreign person or company or body, permission obtained under the prevailing law to

make investment or carry on business or transaction in Nepal,

- (h) Where the promoters is a foreign person, a document proving the country of his/her citizenship,
- (i) Where the promoter is a foreign company or body, a certified copy of the incorporation of such company or body and major documents relating to such incorporation.

(2) Notwithstanding anything contained in Sub-section(1), if the promoter agrees to accept the articles of association in the format prescribed for the incorporation of a company with a single promoter of single shareholder, it shall not be required to submit the articles of association of the proposed company.

5. Registration of company: (1) Where an application is made for the incorporation of a company pursuant to Section 4, the Office shall, after making necessary inquiries, register such company within 15 days after the date of making of the application and grant the company registration certificate to the applicant, in the format as prescribed.

(2) After a company has been registered pursuant to Sub-section (1), the company shall be deemed incorporated.

(3) The office shall maintain company register in the format as prescribed, for purpose of Sub-section (1).

(4) After the incorporation of a company under this Section, subject to this Act, the matters contained in the memorandum of association and the articles of association shall be binding on the company and its shareholders as if these were the provisions contained in separate agreements between the company and every shareholder and amongst its shareholders.

(5) Without registering a company under this Act, no person shall use the name company and carry on any kind of transaction by the name of any firm or institution.

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

- (a) If the name of the proposed company is identical with the name by which a company in existence has been previously registered or so resembles the name of that company as it might cause misleading,
- (b) If the name or objective of the proposed company is contrary to the prevailing law or appears to be improper or undesirable in view of public interest, morality, decency, etiquette etc. or reflects criminal motive ,
- (c) If the name of the proposed company is identical with the name of a company of which registration has been cancelled pursuant to this Act or that of a company which has been insolvent under the prevailing law or so resembles such name as it might cause misleading and a period of five years shall not expired after such cancellation of registration or insolvency,
- (d) If the requirements for the incorporation of a company under this Act are not fulfilled.

(2) If the office refuses to register company in any of the circumstances as referred to in Sub-section (1) it shall give a notice there of, accompanied by the reasons therefore, to the applicant no later than 15 days after the date of application made for the incorporation of company pursuant to Section 4.

(3) If the office refuses to register any company pursuant to Sub-section (1) or fails to give a notice pursuant to Sub-section (2), a person who is not satisfied may file a complaint in the court within fifteen days.

7. Company to be a body corporate: (1) Any company incorporated under this Act shall be an autonomous and corporate body with perpetual succession.

(2) Subject to this Act, company like an individual, acquire, hold, sell, dispose of or otherwise deal with, any movable or immovable property.

(3) A company may sue and be also sued by its own name.

(4) A company may, like an individual, enter into a contract and exercise the rights and perform the obligations as referred to in the contract.

8. **Limited liability:** The liability of a shareholder of a company incorporated under this Act in respect of its transactions shall be limited on to the maximum value of shares which he has subscribed or undertaken to subscribe.

9. **Number of shareholders:** (1) The number of shareholders of a private company shall not exceed fifty.

(2) Subject to the proviso to Sub-section (2) of section 3, the number of shareholders of a public company shall be seven in minimum and a maximum of any number.

(3) Notwithstanding anything contained in Sub-section (1), any employee who has purchased a share of a company under scheme of selling shares to employees or any employee who has already purchased a share under such scheme but is not in service of the company for the time being shall not be counted as a shareholder.

10. **Terms to be abided by company:** An company incorporated under this Act shall abide by the following terms, in addition to those set forth in this Art, memorandum of association or articles of association:

(a) The company shall carry on all of its activities and transactions by its name.

(b) A private company shall add the words “private limited” to its name as the last words and a public company shall add the word “limited” to its name as the last word.

Provided, however, that this provision shall not apply to a company not distributing profit.

(c) A private company shall not sell its shares and debentures publicly.

- (d) A private company shall not pledge, or otherwise transfer title to, its securities to any person other than its shareholder without fulfilling the procedures contained in the memorandum of consensus agreement,
- (e) A company shall not open a partnership or private firm.
- (f) Except as otherwise provided in this Act, a company not distributing profits shall not distribute dividends among its members or pay, directly or indirectly, any amount to a member or his/her close relative.

11. Paid up capital of public company: (1) The paid up capital of a public company shall be a minimum of ten million rupees, except as otherwise provided in the prevailing law or in a notification by the Government of Nepal in the Nepal Gazette that the paid up capital of any particular company shall be in excess of the said required minimum.

(2) Notwithstanding anything contained in subsection (1), a public company which does not have the paid up capital as mentioned in that Sub-section at the time of commencement of this Act shall maintain the capital referred to in Sub-section (1) no later than 22 Ashwin 2065 (8 December 2008).

12. To be incorporated as public company to carry on some specific transactions: Notwithstanding anything contained elsewhere in this Act, a company carrying on the business of banking, financial transactions, insurance business related transactions, stock exchange business, pension fund or mutual fund or a company carrying on such other business or transactions as may be prescribed shall be incorporated as a public company.

13. Conversion of private company into public company: (1) In the following circumstances, a private company shall be converted into a public company under this section:

- (a) If the general meeting of the private company, by adopting a special resolution, decides to convert that company into a public company,

Provided, however, that no private company shall be capable of being converted into a public company unless and until it fulfills the requirements to be fulfilled under this Act for being a public company

- (b) If twenty five percent or more of the shares of a private company are subscribed by one or more than one public company,

Provided, however, that in computing the percentage as referred to in this Clause, the share passed by any banking or financial company as a trustee shall not be calculated.

- (c) If a private company subscribes twenty five percent or more of the shares of a public company.

(2) In the circumstances as refer to in Clause (a) of Sub-section (1), the concerned private company, shall for being converted into a public company, make an application as prescribed, accompanied by a copy of the resolution mentioned in that Clause and by the fees as prescribed , to the office within thirty days after the date of such resolution.

(3) On receipt of an application pursuant to Sub-station (2), the office shall, if the concerned private company has fulfilled the necessary requirements for carrying on transactions as a public company, mention in the company register the contents of conversion of such company into a public company and give a company conversion certificates as prescribed within sixty days.

(4) If any private company has to be converted into a public company owing into the circumstances referred to in Clause (b) or (c) of Sub-section (1), the concerned private company shall make an application, as prescribed, setting out all details, accompanied by the fees as prescribed, to the Office for being converted into a public company within seven days after the date of occurrence of such circumstances.

(5) On receipt of an application pursuant to Sub-section(4), the Office shall, if such company has fulfilled the requirements to be fulfilled by a public company under this Act to carry on transactions, mention in the company register the contents of conversion of company into a public company and give a company conversion certificate as prescribed.

(6) If private company is converted into a public company pursuant to this Section, any subsidiary company of that company, as well, shall, *ipso facto* be deemed to have been converted into a public company in the same date.

(7) In the event of conversion into a public company pursuant to Sub-section (6), it shall be the obligation of the concerned company to make an application, accompanied by the required documents, to the Office to get recorded in the company register the contents of conversion of such subsidiary company into a public company and obtain the certificate.

(8) In the event of conversion of any private company into a public company pursuant to this Section, the provisions applicable to the public company under this Act shall be deemed to be, *ipso facto*, applicable to that company after the date of such conversion.

(9) In the event of conversion of any private company into a public company pursuant to this Section, all the assets and liabilities of the private company so converted shall devolve on the successor company.

14. Conversion of public company into a private company: (1) In the following circumstance, a public company shall be converted into a private company under this Section:

- (a) If the number of shareholders of the public company becomes less than seven,
- (b) If the public company fails to maintain its paid-up capital under Section 11 or the paid-up capital as referred to in section 11 is not maintained because of reduction in capital pursuant to section 57.

Provided, however, that this provision shall not apply to the company as referred to in Sub-section (2) of Section 11.

(2) In the event of occurrence of a circumstance as referred to in Sub-section (1), the concerned public company shall make necessary amendments to its memorandum of association and articles of association and convert it into a private company within six months.

(3) The concerned public company shall make an application, accompanied by copies of the memorandum of association and articles of association amended pursuant to sub-section (2) and the prescribed fees, to the Office for being converted into a private company, within thirty days after the making of such amendment.

(4) On receipt of an application pursuant to Sub-section(3),the Office shall mention in the company register the contents of conversion of such company into a private company and give a company conversion certificate, as prescribed, within sixty days.

(5) In the event of conversion of any public company into a private company pursuant to Sub-section (4), all the assets and liabilities of the public company to be so converted shall devolve on the successor company.

- 15. Service of summons, notice etc:** (1) Notwithstanding anything contained in the prevailing law, if any notice, summons, letters rogatory etc. required to be served on a company, director, shareholder, debenture-holder or employee in regard to the transactions of, or any matter related with, the company, is delivered at the registered office of the company or sent by registered post or sent through the tale-fax, email, telex or similar other electronic device installed in such office, such notice, summons or letter oratory shall be deemed to have been duly served. If any notice, summons, letters rogatory etc. cannot be so served, the concerned company, director or employee may be informed thereof by broadcasting or publishing a notice pertaining there to by radio,

television or in any newspaper circulating at national level. In such a case, he/she shall be deemed to have been informed thereof.

(2) Notwithstanding anything contained in the prevailing law, if any notice, summons, letter rogatory etc. is required to be served by a company or by any competent authority or court on any director, shareholder, debenture-holder or employee or the company in any matter related with his/her duties of office, it may be sent to the telex, email, telefax address, if any, given by such director, shareholder or employee and where such address has not been given, it may be sent by registered post to the address supplied by him/her for correspondences by post and where such summons, notice, letters rogatory etc. is so sent, the same shall be deemed to have been duly served.

(3) Notwithstanding anything contained elsewhere in this Act, in providing a notice or information required to be sent by a company to its shareholder debenture-holder or director under this Act or receiving any information from them, such notice or information may be sent to an electronic communication address supplied by them, by using electronic communication device as provided in the articles of association of the company or if they so agree.

Provided, however, that such notice or information shall be sent by post or through other reliable means to the shareholder, debenture-holder or director who does not consent to the service of such notice or information on him/her by electronic communication device.

16. Functions and duties of Registrar: (1) It shall be the duty of the Registrar to implement this Act and carry out company administration.

(2) Without prejudice to the generality of Sub-section (1), the Registrar may frame and issue necessary directives for the implementation of this Act and the carrying out of company administration related functions in an effective or systematic manner: and it shall be the duty of each company and officer to abide by such directives.

(3) The directives issued pursuant to Sub-section (2) shall be published in such a manner that such directives are available to the general public.

(4) The Registrar may, as per necessity, delegate any of the powers conferred to him/ her under this Act to any officer employee subordinate to him/her.

(5) Notwithstanding anything contained elsewhere in this Section, nothing in this Section shall be deemed to limit the direction given by any regulatory body to a company under the prevailing law or the authority to be exercised by that body in respect of such company under the prevailing law.

17. Pre-incorporation contract: (1) A contract made prior to the incorporation of a company shall be a proposed contract only, and such contract shall not be binding on the company.

(2) If, prior to the incorporation of a company, any person carries on any transaction or borrows money on behalf of the company, such person shall be personally liable for any contract related with the transaction so carried on, subject to Sub-section (3).

(3) If, within the time mentioned in any transactions or within the reasonable time after the incorporation of a company, the company, through its act, action or conduct, accepts any act, action or conduct, accepts any act, action to borrowing done or made prior to the date of authorization to commence its transactions or endorses such act or action, that transaction shall be binding on the company and the other contracting party; and the person carrying out such act to action shall be released from the personal liability to be borne pursuant to Sub-section(2).

(4) Notwithstanding anything contained elsewhere in this Section, the consensus agreement of a private company shall govern any contracts made prior to the incorporation of such company.

Chapter 3

Memorandum of Association, Articles of Association and prospectus

18. Memorandum of Association: (1) The Memorandum of Association of a company shall state the following matters:

- (a) The name of company,
- (b) The address of the registered office of the company,
- (c) The objectives of the company,
- (d) The acts to be carried out to accomplish the objectives of the company,
- (e) The figure of the authorized capital of the company and the figure of the share capital to be issued by the company for time being and the figure of undertaken to be paid by the promoter of the company,
- (f) Types of shares of the company, the rights and powers inherent in such shares, value of each share and number of shares of different types,
- (g) Restrictions, if any, in the purchase or transfer of shares,
- (h) Number of shares which the promoters have undertaken to subscribe for the time being,
- (i) Terms of payments of share amounts,
- (j) Statements that the liability of shareholders shall be limited,
- (k) The maximum number of shareholders in case of a private company,
- (l) Other necessary matters.

(2) If any of the following matters shall be done or provided, in addition to those mentioned in Sub-section(1), the memorandum of association shall also state such matters:

- (a) If the promoter or any other person is entitled to subscribe shares or acquire title thereto in any manner other than by making payment in cash, such matter,
- (b) If the company is to acquire any property in any manner from the promoter or any other person at the time of commencement of its transactions such matter,
- (c) If the company itself to bear the expenses incurred on its incorporation, such matter,
- (d) If the promoter or any other person is entitled to any special privilege or right from the company, such matter.

(3) In subscribing shares or acquiring title thereto by the promoter or any other person in consideration fit other than cash payment as mentioned in Clause (a) of Sub- section (2) and in acquiring any property by he company from the promoter or any other person at the time of commencement of its transactions as mentioned in cause (b), in the case if a public company, such consideration other than cash and such property shall be caused to be valuated by an engineer or accountant holding certificate to conduct valuation work under the prevailing law.

(4) The criteria for the valuation of any property pursuant to Sub-section (3) shall be as prescribed; and unless such criteria are prescribed, the person valuating such property shall mention the criteria employed by him/her to valuate the property.

(5) If the memorandum of association is inconsistent with this Act it shall *ipso facto* be void to the extent of such inconsistency.

(6) The format of memorandum of association shall be as prescribed.

19. Signature to be affixed on memorandum of association: (1) The memorandum of association of a company shall state the full names and addresses of its promoters, indicate the number of shares which each promoter has undertaken to subscribe and be signed by each of them.

(2) The memorandum of association shall clearly contain the names and address of a witness for each promoter and also bear the signature of such witness.

(3) Each promoter shall undertake to subscribe the shares as mentioned in the articles of association of the company and at least one hundred shares if no provision is so mentioned.

(4) No later than one year after the incorporation of a company, an application may be made, pursuant to a decision of the board of directors of the company, to the Office for the rectification of any minor mistake or printing or typing error appearing in the memorandum of association and articles of association submitted along with an application made under Section 4.

(5) If an application is made pursuant Sub-section(4), the Office shall, if it deems proper after examining it, rectify such mistake or error and record the same.

Provided, however, that no matter shall be rectified in a manner to alter the main objectives of the company.

20. Articles of association: (1) A company shall frame the articles of association in order to attain the objectives set forth in its memorandum of association and carry out its activities in a well-managed manner.

(2) The articles of association shall state the following matters:

- (a) Procedures for convening the general meeting of the company and notice to be given for such meeting,
- (b) Proceedings of general meeting,
- (c) Number of directors, provision of alternate director, if any, and tenure of directors,

- (d) Provisions relating to the minutes of decisions of the general meeting and the board of directors, and duplicate copies and inspection thereof,
- (e) If a person has to subscribe shares to become a director of a company, minimum number of shares,
- (f) In the case of a public company, qualifications and number of independent director,
- (g) Where any professional persons, other than shareholders, are to be appointed as directors, provisions relating to the number, tenure, qualifications and procedures of appointment of such persons,
- (h) Powers and duties of the board of directors and the managing director,
- (i) Authority of directors and delegation of authority,
- (j) Quorum for a meeting of the board of directors, notice of meeting and proceedings of meeting,
- (k) Lien on shares,
- (l) Different classes of shares and the rights, powers and restrictions attached to such shares,
- (m) Provisions relating to calls on shares and forfeiture of shares,
- (n) Provisions relating to the transfer of shares,
- (o) Matters on alteration in share capital,
- (p) Matters on buying back of shares by the company, if the company is to buy back its shares,
- (q) Appointment of a company secretary,
- (r) Provisions relating to remuneration, allowances and facilities of directors,

- (s) Use of the company's seal in its transactions, if it is to be so used,
- (t) Accounts, books of accounts and audit of the company,
- (u) Provisions on powers to raise loans or debentures,
- (v) Amalgamation of the company,
- (w) Such matters, if any, as required by the prevailing law to be mentioned in the articles of association of a company carrying on any specific business,
- (x) Such other necessary matters as required to be mentioned in the articles of association.

(3) If any provision contained in the articles of association of the company, inclusive of a provision on the saving of its directors or officers, is inconsistent with this Act and the memorandum of association, such provision shall be void to the extent of such inconsistency.

(4) The format of articles of association shall be as prescribed.

21. Amendment to memorandum of association and articles of association: (1)

The general meeting of a company may, subject to Section 6, amend the memorandum of association or articles of association, by adopting a special resolution to that effect.

(2) The company shall give information of any amendment made to the memorandum of association or articles of association pursuant to Sub-section (12) to the Office within thirty days; and the Office shall record the same and give information thereof to the concerned company, within seven days after the receipt of such information.

(3) Notwithstanding anything contained in Sub-section (2), if any company has to amend its name, it shall adopt a special resolution to that effect at its general meeting and make an application, accompanied by the fees as prescribed, for prior approval of the Office: and if the Office gives approval to

amend the names as per the application so received, the name of that company shall be amended.

(4) If a shareholder of a public company who is not satisfied with an amendment made to the objectives of the company may, on fulfilling the following requirements, file a petition, setting out the reasons therefore, in the court to have that amendment declared null and void:

- (a) A shareholder or shareholders holding at least five percent shares of the paid-up capital of the company, except the shareholders who consent to or vote for the amendment or alteration, has to make a petition,
- (b) A petition has to be filed within twenty one days after the adoption of the resolution to amend the objectives of the company,
- (c) Where any one is to file a petition on behalf of one or more than one shareholder entitled to make petition, the petition has to be filed by a person who is authorized in writing for that purpose.

(5) Unless and until the court is satisfied that the information about the contents, date, time and venue of a petition made under Sub-section (4) has also been given to the company, the petition shall not be heard.

Provided, however, that if it appears from the documents submitted to the court that the concerned company has refused to acknowledge the notice, nothing shall prevent the court from hearing the petition.

(6) Where a petition is filed in the court pursuant to Sub-section (4), the amendment made to the objectives of the company shall not be effective pending the final decision or order by the court in that matter.

(7) On a petition as referred to in Sub-section (4), the court may issue an appropriate order, specifying the following terms and conditions:

- (a) Declaring the amendment made to the objectives of the company to be fully or partly valid or void,
- (b) Requiring the company to subscribe for a reasonable value, the shares and other rights held by the shareholders making a petition under Sub-section (4), upon being disagreed with the making of alteration in the main objectives of the company,
- (c) The shares have to be subscribed under Clause (b) from the moneys as referred to in Sub-section(2) of Section 61; and in the case of a company which has no such moneys, issuing an order to decrease the capital of the company as if the share capital were decreased to the extent of such subscription by adopting a special resolution by the company; and where such order is issued, the company shall amend its memorandum of association and articles of association, subject to the provisions of this Act.

(8) Notwithstanding anything contained elsewhere in this Act, where an order is issued by the court to fully or partly void the decision made by the company to amend its objectives, the company shall not be entitled to amend its memorandum of association or articles of association in that matter without permission of the court or in a manner contrary to the order of the court.

(9) Where the memorandum of association or articles of association of a company is altered by an order of the court or the amendment made by the company is fully or partly endorsed by the court, such alteration or endorsement shall be enforced as if such alteration or endorsement were made by the general meeting of the company on its own.

- 22. Memorandum of association and articles of association to be published:** (1)
A public company shall publish its memorandum of association and articles of association within three months after getting license to commence its business.

(2) If any amendment is made to the memorandum of association and articles of association of a public company, the amended memorandum of association and articles of association shall be published within three months after such amendment.

(3) A public company shall so keep the memorandum of association and articles of association published pursuant to Sub-section (1) or (2) at its registered office that such memorandum and articles can be made available as and when so demanded by the concerned.

23. Prospectus to be published: (1) A public company shall publish its prospectus prior to issuing its securities publicly.

(2) Prior to the publication of prospectus under Sub-section(1), the prospectus signed by all directors of the company has to be submitted, along with a written application made to the Securities Board for approval, under the prevailing laws on securities.

(3) Unless and until the Securities Board approves and gives permission for the public issue under Sub-section (2) and a copy of such prospectus is registered with the office, no company or no person, on behalf of such company, shall publish, or cause to be published , the prospectus of such company.

(4) If it appears that the prospectus submitted pursuant to Sub-section(2) omits any important matter or contains any unnecessary matter the Securities Board shall cause such prospectus to be amended or altered as required and grant approval to publish it in accordance with law.

(5) If the prospectus submitted pursuant too Sub-section (2) is approved by the Securities Board, the concerned company shall give to the Office information thereof, in writing, accompanied by a copy of the approval letter of the Securities Board; and on receipt of that information, the Office shall register the prospectus pursuant to this Section.

Provided, however, that if it appears that any matter contained in this Act has not been complied with, the Office may refuse to register it.

(6) If any person demands for a copy of the prospectus registered pursuant to Sub-section (5), the Office shall provide such copy by collecting the prescribed fees.

(7) In publishing the prospectus pursuant to Sub-section (1), the company shall also mention that the prospectus has been approved by the Securities Board and registered with the Office, and the date thereof.

(8) The covering page of each prospectus shall also mention that such prospectus has been registered pursuant to this Section and that the Securities Board or the Office shall not be liable to bear any kind of responsibility in respect of the matters mentioned therein.

(9) Prior to the approval by the Securities Board of the prospectus of any company, the concerned company shall make a declaration before the Securities Board that the provisions of this Act have been complied with; and the Securities Board may, if it deems necessary, seek opinion of the Office on that matter.

(10) Other procedures to be fulfilled in publishing the prospectus and the matters to be set out in the prospectus shall be as mentioned in the prevailing law on securities.

24. Liability for matters contained in prospectus: (1) It shall be the duty and obligation of the concerned company to abide by the matters contained in the prospectus published under Section (23).

(2) The directors who have signed the prospectus as referred to in Sub-section (1) shall be liable for the matters mentioned in that prospectus .

(3) If any published prospectus contains false statements made maliciously or deliberately and any person sustains any loss or damage by reason of his/her subscription of securities on the faith of that prospectus, the

directors who have signed that prospectus shall be personally liable to pay compensation for the actual loss or damage so sustained .

Provided, however, that a promoter who resigns before the decision made by the company to publish the prospectus or whom on becoming aware of any false statement in the prospectus, publishes a notice of that matter to the information of the general public prior to the sale or allotment of securities or who proves that he/she did not know that the prospectus contained any false statement shall not be liable to bear such compensation.

- 25. Duplicate copies to be issued:** (1) If any shareholder or any other person concerned demands for a duplicate copy of the memorandum of association, prospectus, annual accounts and audit or directors report or any document submitted by the company to the Office the concerned company shall provide a duplicate copy of such document by collecting the fees prescribed in the articles of association.

Provided, however, that any person whoever may demand for such document in the case of a public company.

(2) If the concerned company does not provide duplicates of such documents pursuant to Sub-section (1), the Office shall provide duplicates of such documents from its records by collecting the prescribed fees.

- 26. Seal of company and its use:** (1) A company which intends to use a seal in its transactions shall make the seal in its name in clear legible letters.

(2) The company using the seal as referred to in Sub-section (1), shall use it in any reports and records to be submitted on its behalf and business letters to be used in its name, statements of accounts, bills, invoices, requisition order forms, notices and official publications, negotiable instruments, bills of exchange, promissory notes, and official documents signed or issued on its behalf.

(3) If any person fails to indicate the name of the company while signing, on behalf of the company, the documents mentioned in Sub-section (2), such person shall be personally liable for the same.

Chapter 4

Shares and Debentures

27. Face value of shares and application: (1) The face value of shares of a private company shall be as specified in its articles of association.

(2) The face value of shares of a public company shall be fifty rupees per share or shall be equivalent to such amount exceeding fifty rupees as is divisible by the figure ten as provided in the memorandum of association and articles of association.

(3) In inviting an application by a public company for the subscription of its shares, no amount exceeding fifty per cent of the face value of each share shall be demanded with the application.

Provided, however, that in raising capital by a company which has been in operation since at least three years ago by publishing its audited fiscal statements for its last three years, at the time of publication of its prospectus, this provision shall not be applicable.

(4) A person who intends to subscribe the shares of a public company has to make an application in the format as prescribed.

28. Allotment of shares: (1) Where a public company invites the general public to apply for the subscription of its shares it shall allot the shares and give the shareholders a notice in the format as prescribed, within a maximum period of three months after the date of closure of share issue.

Provided, however, that in cases where at least fifty percent of the total shares issued publicly cannot be sold failing a guarantee/underwriting agreement on the subscription of at least fifty percent of the publicly issued shares, no shares shall be allotted.

(2) If the company makes an application, explaining the reasons for failure to allot shares within the time-limit set forth in Sub-section(1), owing to the circumstance mentioned in the proviso to that Sub-section within seven days after the expiration of that time-limit, the Office may extend the time limit for up to three months for the allotment of shares. If the shares cannot be allotted even within such extended time limit, the company may allot such shares through negotiations or any other methods.

(3) If the allotment of shares cannot be made even within the time –limit as referred to in Sub-section (1) or (2) , the amount received for the subscription of shares as well as an interest thereon, as prescribed, from the day of expiration of such time-limit to the day of refund of such amount shall be refunded.

(4) If the funds are insufficient to refund the amount required to be refunded pursuant to Sub-section (3), the shortfall amount shall be borne by the promoters personally.

(5) Where the allotment of shares pursuant to Sub-section (1)or (2) is made discriminatorily or with intent to cause any loss or damage to any investor may file a petition, setting out the reasons for the same, in the court on that matter.

(6) If a petition is filed pursuant to Sub-section 5), where any investor has sustained any loss or damage by reason of the deliberate violation of this Section by any officer of the company or permission given by such officer to any one to commit such violation, the court may issue an order for realization from such officer personally of compensation for such loss or damage as well as reasonable expenses incurred in the legal action.

29. Power to issue shares at premium: (1) Any company fulfilling the following conditions may, with the prior approval of the Office, issue shares at a premium:

- (a) The company has been making profits and distributing dividends for three consecutive years,

- (b) The company's net worth exceeds its total liabilities,
- (c) The company's general meeting has decided to issue shares at a premium.

(2) Where the shares are sold at a premium pursuant to Sub-section (1), a sum in excess of the face value, out of the proceeds thereof, shall be deposited in a premium account to be opened to that effect.

(3) The company may use the moneys in the account as referred to in Sub-section (2) in the following acts:

- (a) Paying up un-issued share capital to be issued to the shareholders as fully paid bonus shares,
- (b) Providing for the premium payable on redemption of any redeemable preference shares,
- (c) Writing off the preliminary expenses made by the company,
- (d) Bearing or reimbursing the expenses of, or the commission paid or discount allowed on, any issue of shares of the company.
- (e) In making a request for approval of the Office to issue shares at a premium pursuant to Sub-section (1), the audited financial statements for three years shall be provided to the Office.

30. Shares with different rights and rights of such shareholders: (1) The company may, by making provisions to that effect in its memorandum of association and articles of association, issue various classes of shares with different rights attached thereto.

(2) Except as otherwise provided in the articles of association of company, approval of the shareholders of any particular class shall be required to make any alteration in the rights of those shareholders of that class.

Provided, however, that no alteration may be made in the rights of the shareholders of any particular class in a manner to adversely affect the rights of the shareholders of any other class.

(3) If the shareholders representing at least ten percent share of any particular class who are not satisfied with a decision to make alteration in the rights attached to the shares of that class pursuant to Sub-section (2) file a petition in the court to have the decision to make such alteration void, the decision made to make alteration in the rights of the shareholders of such class shall not be enforced unless and until otherwise decided or ordered by the court.

(4) A petition shall be made pursuant to Sub-section (3) within thirty days after the decision made to make alteration in the rights attached to the shares of any particular class; and any decision as referred to in Sub-section(2) shall not be enforced pending the expiration of that time limit.

(5) If it appears that alteration in the rights conferred to the shareholders of the class concerned is prejudicial to the rights of the petitioner shareholders, the court may quash the decision made on the alteration in the rights of the shareholders of that class.

(6) The board of directors shall submit a proposed resolution on the alteration in the rights of the shareholders of any particular class pursuant to Sub-section (2) to the general meeting of the shareholders of the concerned class; and such resolution has to be adopted as a special resolution by the general meeting.

(7) Notwithstanding anything contained elsewhere in this Section, in privatizing a company fully or partly owned by the Government of Nepal, as a shareholder, in accordance with the prevailing law on privatization, the Government of Nepal may have special voting right in making decision on the following matters, as provided in the articles of association, so long as the investment to the Government of Nepal is retained in such company:

- (a) In making decision on a resolution to relinquish the title to an undertaking pursuant to Clause (a) of Sub-section (1) of Section 105,
- (b) In making decision on voluntary liquidation of the company,
- (c) In making decision to amalgamate the company into another company.

31. Return of shares to be filed with office: (1) A company shall file with the Office a return of allotments stating the number of shares issued and allotted, total amount of the shares, the names and addresses of the allottees, and the amount paid or due and payable on each share, within thirty days after the allotment of shares.

(2) if any shares have been allotted as fully or partly paid up otherwise than in cash, the company shall file with the Office a deed constituting the title of the allottee to the shares together with any contract of sale or a contract for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted and the extent to which they are to be treated as paid- up.

32. Dealing in securities: (1) While issuing its securities to the general public, a public company shall deal in the securities only through a securities dealer recognized to do securities transactions including all acts such as the sale, allotment and recovery of amounts of such securities.

(2) A public company shall file with the Office a copy of an agreement made by it on the dealing of securities through any body, within seven days after the date of making of such agreement.

33. Share certificate: (1) A share certificate in the prescribed format shall be issued to every shareholder in respect of each share subscribed by him/her, within two months after the allotment of shares; the share certificate shall bear the signature of any two out of a director or chief executive of the company or

the company secretary, in the case of a public company, and the signature of the person as mentioned in the articles of association or consensus agreement, in the case of a private company, and also bear the seal of the company, if any .

(2) While issuing a share certificate in respect of any shares held jointly by two or more persons, the share certificate may be issued to any one of them, by mentioning their names in the certificate.

Provided, however, that, the names of all shareholders shall be mentioned in the shareholder register.

(3) If a share certificate is lost or destroyed because of a divine act or otherwise, the shareholder shall give information thereof to the registered office the company immediately when he/she knows that the share certificate has been so lost or destroyed because of the divine act or otherwise.

(4) If any application made pursuant to Sub-section (3), the company shall , if the matter contained in the application seems to be reasonable after inquiring into all necessary matters relating thereto, issue another share certificate to the applicant, by collecting the duplicate fees for duplicate copy as prescribed in the articles of association; and this matter shall also be recorded in the shareholder register.

(5) Notwithstanding anything contained elsewhere in this Section, if a listed company has caused a register to be maintained, pursuant to Sub-section (6) of Section 46, by the securities registrar authorized to provide securities deposit service under the prevailing law, provision may be made to issue to the shareholder a securities deposit passbook or any other certificate certifying him/her to be a shareholder, instead of a share certificate.

(6) A certificate issued by a company, signed by its competent officer and under the seal of the company, if any, to be used by it, specifying the number of shares or debentures held by any shareholder or debenture-holder shall be *prima facie* evidence of his/her title to such shares or debentures.

(7) If any company allots any shares or debentures or transfers such shares or debentures to a representative of a body licensed under the prevailing law to carry on securities dealings, the provision of Sub-section(1) shall not apply to such shares or debentures.

34. Raising loans or issuing debentures: (1) If a public company deems necessary to raise loans or issue debentures, it may, specifying the reason therefore, a work plan to be executed from proceeds and budget necessary for that propose raise loans or issue debentures with or without pledging or mortgaging its immovable assets.

Provided, however, that no debentures may be issued unless and until an approval to commence its business is obtained and its issued capital is fully paid up.

(2) Notwithstanding anything contained in the prevailing law, any company may, subject to sub- section(1) , raise additional loans or issue additional debentures against the security already furnished by that company with the already furnished by that company with the previous creditors as a security from such creditors, within the limit of such security, by clearly indicating the previous creditors as well as amount of loan (amount) already obtained.

(3) Notwithstanding anything contained in the prevailing law, the matters relating to the terms, repayment period and interest of a loan borrowed or lent by a company shall be governed by a deed or contract concluded between the creditor and the borrower.

(4) If a company is to raise loans or issue debentures pursuant to Sub-section (1) or (2), the company shall give its information, along with the reasons for the same, to the office.

35. Procedures for issuing debentures: (1) A public company shall, in issuing debentures pursuant to this Act, issue debentures after making provision of a debenture trustee. Such debenture trustee has to be a debenture trustee licensed by the Securities Board.

(2) The matters relating to the creditor and the borrower, in issuing debentures with a debenture trustee, shall be as mentioned in an agreement to be concluded between such trustee and the company.

(3) If the memorandum of association or the articles of association shall provide that debentures can be converted into shares or such term has been specified prior to the issuance of debentures, a debentures may be converted into shares, subject to the share capital related provisions of this Act.

(4) If any debentures are to be converted into shares pursuant to Sub-section (3), this matter has to be clearly mentioned in the prospectus.

(5) Notwithstanding anything contained in the prevailing law, the court may, if it thinks necessary, issue an order of specific performance to get performed a contract concluded between a public company and a person in respect of the subscription of the debentures issued by that company.

36. Agreement to be concluded between debenture trustee and company: (1)

An agreement has to be concluded between a company issuing debentures and a debenture trustee acting as a trustee for the protection of the interest of debenture-holders, in respect of the debentures to be raised by such company.

(2) An agreement to be concluded pursuant to Sub-section (1) shall set out the following matters:

- (a) that the debenture trustee is entitled to carry out, or cause to be carried out, valuation of the company's assets, project analysis or management analysis,
- (b) the period of repayment of the principal and interest of debentures subscribed by the debenture-holder, interest rate, mode of repayment of the principal and interest, matter of conversion of debentures into shares, if there is such provision,

- (c) Matters, relating to a provision made on the lights of other creditors over the assets of the company and liabilities that may arise therefrom in the future.
- (d) A provision that, in the case of violation or non-fulfillment of the terms mentioned in the agreement or for any other reasonable reason, if it is required to take the control of financial transactions of the company or to take possession of the security as referred to in the agreement, the debenture trustee may take in his/her possession the assets or properties of such company to the property that he has taken as the security of guarantee or hold the security of guarantee with himself/herself or sell the same by auction or in any other appropriate manner,
- (e) Procedures for payment by the company of the service charges and other direct expenses of the debenture trustee,
- (f) That the debenture trustee shall not be liable to any loss or damage caused to the company or the debenture-holder from any act done by the trustee in that capacity,
- (g) That, in the event of occurrence of any circumstances necessitating the liquidation of the company, the debenture trustee is entitled to take such legal action as may be taken in behalf of the debenture-holder and exercise the powers of the debenture holder.
- (h) Other necessary matters on the protection of interest of the debenture-holder.

(3) The debenture trustee may, for the protection of interest of the debenture-holder, take security of the assets of the company and get such security registered in his/her name pursuant to the prevailing law.

(4) Prior to the taking of security pursuant to Sub-section (3), the debenture trustee may, if he/she deems necessary, also carry out, or cause to be carried out, the calculation of property or assets to taken as security and the project analysis of management analysis of the company.

(5) After the conclusion of an agreement between a debenture trustee and a company pursuant to this Section, such company has to obtain the approval of the debenture, trustee if any.

37. Inquiry and demand of statements by debenture trustee: Prior to concluding an agreement with a company to act as a debenture trustee, the debenture trustee may hold necessary inquiry into, and obtain or demand statements, notice or information on, the following matters; and the concerned company has to provide the same if so demanded:

- (a) Whether the memorandum of association or article of association of the company has a provision that it may raise loans or debentures: and if so, whether the board of directors of the company has powers to make decision to so raise debentures,
- (b) Whether the memorandum of association or articles of association of the company has a provision that debentures may be raised through a debentures trustee,
- (c) Whether there is a situation that the existing assets of the company can cover the value of debentures raised,
- (d) Matters relating to other creditors and liabilities of the company.
- (e) The company's balance sheet and auditor's report.
- (f) Such other necessary matters as the debenture trustee may consider to be appropriate.

38. Company to submit periodic statements to debenture trustee: (1) After an agreement has been concluded between a company and a debenture trustee under Section 36, the company has to submit its statements in financial transactions to the debenture trustee in every six months.

(2) In the event of a change in the management or any kind of change in the ownership of the company after raising of debentures, the company has to give information thereof to the debenture trustee within seven days after such change.

(3) In the event of necessity of any additional statement, notice or information submitted by the company pursuant to Sub-section(1) or (2), the debenture trustee may demand such statement, notice or information from the company; and it shall be the duty of the company to provide the statement, notice or information so demanded to the debenture trustee.

39. Rights and liabilities of debenture trustee: (1) If the company violates any of the terms mentioned in the agreement concluded under Section 36, the debenture trustee may instruct such company to fulfill such terms as soon as possible or to make repayment of the principals and interest of the debenture-holder within a time limit as specified by him/her.

(2) If it is required to take the financial transaction of the company under control or to possess the security as referred to in the agreement by reason of the repayment made under Sub-section (1) or for any other reason, the debenture trustee may, subject to the prevailing law, take the assets, properties or securities of such company under his/her control and hold the assets or properties so possessed in his/her own or sell such assets or properties by auction or otherwise or deal with the same in other manner.

(3) Following the possession of the assets of the company under Sub-section (2), the amount of a debenture-holder shall be repaid out of the proceeds of sale of the assets. If any amount remains surplus after repayment of the amount payable to the debenture-holder, the debenture trustee shall return that amount to the concerned company

(4) Notwithstanding anything contained elsewhere in this Act, except in cases where the debenture trustee him/herself buys the assets taken by the debenture trustee as the security, if the proceeds of sale of the property which the debenture trustee has taken as security or possessed be not sufficient to

repay all the amounts to debenture holders, the debenture trustee shall pay the amounts to debenture-holders on *pro rata*; and such shortfall amounts shall not be recovered from the debenture trustee's property.

(5) Any debenture-holder holding more than fifty percent debentures may, showing the ground of failure of a debenture trustee to act in the interest of debenture-holder, make an application to the Securities Board to remove such debenture trustee.

(6) If, on examining the application made pursuant to Sub-section (5), the contents appear to be reasonable, the Securities Board may remove such debenture trustee and arrange for another debenture trustee.

40. Service charges to be collected by debenture trustee: (1) The debenture trustee may collect service charge from a company for having acted in the capacity of debenture trustee. The amount of such service charge shall be as specified in the agreement concluded between the debenture trustee and the concerned company.

(2) The debenture trustee may recover from the concerned company such actual expenses incurred in doing any act on behalf of the company or debenture-holder or in carrying out valuation, possession or auction sale of the company's assets.

41. Debenture trustee to have rights of debenture-holder: (1) If a company raising debentures is liquidated or becomes insolvent for any other reasons, the debenture trustee shall make representation on behalf of the debenture-holder.

(2) In the event of necessity to institute a lawsuit on behalf of the debenture-holder for the repayment of the principal and interest of such debenture-holder or otherwise, the debenture trustee shall have the right to institute the lawsuit on behalf of the debenture-holder.

42. Sale or pledge of shares or debentures: (1) The share or debenture of a company may be sold or pledged as good as movable property, subject to this Act, the memorandum of association and articles of association.

(2) Notwithstanding anything contained in Sub-section (1), the promoter of a company, other than a private company which has not borrowed loan from any other company, shall not be entitled to sell or pledge any share held by him/her until the first general meeting of that company is held and a call on the share issued in his/her name is fully paid up .

(3) where a share or debenture is pledged pursuant to Sub-section(1), the pledge shall make an application, in such format and along with such fees as may be prescribed, to the registered office of the company to have the matter recorded in the register. The applicant shall also submit the deed on pledge as well as the share or debenture certificate, along with the application to be so made.

(4) Where an application is made pursuant to Sub-section (3), the company shall record in the register the execution of such pledge and on receipt of information on the redemption of the share or debenture so pledged, the records of such pledge shall be crossed off the register.

43. Transmission of shares or debentures: (1) If any share or debenture is sold, subject to Sub-sections(1) and (2) of Section 42, the buyer thereof shall make an application to the registered office of the company , in such format and along with such fees as may be prescribed, to have such debenture or share transmitted to his/her name. The applicant shall also submit, along with such application, a copy of the deed relating to the sale and purchase of share or debenture certificate.

(2) If an application is made under Sub-section (1), the company shall cross off the name of transferor shareholder or debenture holder and enter the name of the transferee shareholder in the register within fifteen days after the making of such application.

(3) Notwithstanding anything contained in Sub-section (1), if the prevailing law on securities transactions provides that no deed of transfer is required to transfer the title to the share or debenture of a company such deed shall not be required to be produced along with an application to be so made.

(4) If a person who transfers any securities makes an application, also accompanied by a deed of transfer of share, signed by the purchaser to get the transfer of any share or debenture recorded, the company shall register the name of share or debenture transferee in the shareholder register or debenture-holder register as if such application was made by the transferee him/herself.

(5) If any person acquires the title to any share or debenture by operation of any other provision contained in the prevailing law the provision contained in Sub-section(1), shall not be deemed to prevent the company from registering such person as a shareholder or debenture-holder.

44. Refusal to register share or debenture: (1) Notwithstanding anything contained in Section 42 or 43, a company may, in the following circumstances, refuse to record any pledge of a share in the register or to effect transmission of a share or debenture where it has been disposed of:

- (a) If a call on the share has not been paid up,
- (b) If such transmission will be contrary to the articles of association of the company or the agreement concluded between the shareholders,
- (c) If the transfer fee is not furnished along with the application.

(2) In refusing to record the pledge of a share or debenture in the register or to effect transmission of a share or debenture under Sub-section(1), the company shall give information thereof to both the transferor and the transferee or the ledger and pledge of the share or debenture within fifteen days from the date of making application.

45. Other circumstances where shares or debentures may be transmitted: If any person becomes entitled to the share or debenture held by any shareholder or debenture-holder because of his/her death, being insolvent or otherwise under the prevailing law, and that person so acquiring the title or on whom the title is so devolved makes an application accompanied by an

evidence thereof, to the company, in such format and accompanied by such fees as prescribed, the company shall transmit such share or debenture to him/her.

Provided, however, that notwithstanding that a share has not yet been transferred to the successor so acquiring the title, if an instrument of transfer of the share held by the previous shareholder and of his/her other rights over such share is executed by his/her heir established under the prevailing law, such transfer shall be deemed to have transferred to such successor.

46. Shareholder and debenture-holder register: (1) Each company shall establish a shareholder register and debenture-holder register in the prescribed format and maintain the same at its registered office.

(2) The following matters concerning each shareholder shall be mentioned in the shareholder register as referred to in Sub-section (1), according to the serial number of shares:

- (a) Full name and address of the shareholder,
- (b) Number of shares subscribed by the shareholder,
- (c) Total amount paid by the shareholder and outstanding amount payable by him/her for the share,
- (d) Date of registration of his/her name as the shareholder,
- (e) Date when his/her name was struck off,
- (f) Name and address of the nominee after the death of the shareholder, if such nominee is appointed.

(3) The following matters concerning each debenture-holder shall be mentioned in the debenture- holder register as referred to in Sub-section (1), according to the serial number of debentures:

- (a) Full name and address of the debenture-holder,
- (b) Number of debentures subscribed by the debenture-holder,

- (c) Total amount paid by the debenture-holder and outstanding amount payable by him/her for the debenture,
- (d) Date of registration of his/her name as the debenture-holder,
- (e) Date when the name of the debenture-holder was struck off,
- (f) Name and address of the nominee after the death of the debenture-holder, if such nominee appointed.

(4) If a shareholder or debenture-holder of a company desires to inspect the register maintained pursuant to Sub-section (1), the company shall allow him/her for the same.

Provided, however, that in the case of a public company, the company may, by publishing a seven-day advance notice in a newspaper with national circulation, and in the case of a private company, the company may, as provided in the articles of association or consensus agreement, close inspection of the register for a maximum period of thirty days at one time, not exceeding in the aggregate forty-five days in a year.

(5) If any person desires to have a duplicate copy of the shareholder register, such duplicate copy shall be issued to that person by collecting the fees as prescribed, in the case of a public company, and such fees as mentioned in the memorandum of association, articles of association or consensus agreement, in the case of a private company, except in case where inspection is closed pursuant to the proviso to Sub-section (4).

(6) Notwithstanding anything contained elsewhere in this Section, a listed company may cause the securities registrar recognized under the prevailing law to provide securities deposits service to establish and maintain a register. A copy of the register so maintained shall be kept at the registered office of the company, prior to giving a notice of the general meeting each year. The register shall set out the matters mentioned in Sub-sections (2) and (3) .

(7) If a register maintained under Sub-section (6) is found to have recorded a false matter in a manner to affect the right and interest of a person, such securities registrar, his/her director, officer and employee shall be liable to punishment as mentioned in Section 160, and the concerned person shall also be entitled to have recovered the loss and damage caused to him/her because of such false record.

47. Information on title to share: (1) If a company asks any shareholder to provide information as to what capacity one has obtained the shares with full voting rights registered in his/her name or whether any other person has investment in the shares registered in the name of such shareholder and where there is another person as a the beneficiary of such shares, as to the identity and nature of the title of that person, it shall be the duty of such shareholder to provide such information to the company within thirty days.

(2) On receipt of the information sought under Sub-section (1) , the company shall record opposite the name of the concerned shareholder, in the register the date of demand of such information, date of receipt of information and the contents of information received and provide the Office with information pertaining there to within seven days.

48. Address of shareholder: (1) Unless otherwise altered by a notice, the address of a shareholder mentioned in the shareholder register shall be considered to be his/her real address.

(2) In the event of change of address of a shareholder, a written notice of the new address has to be given to the registered office of the company immediately after such change.

(3) On receipt of the notice as referred to in Sub-section (2), the director or company secretary shall record the address so changed in the shareholder register.

(4) When a notice is sent to the address supplied by a shareholder, a notice required to be sent by a company to the shareholder under this Act shall,

unless otherwise proved, be deemed to have been duly sent, and received by the concerned shareholder.

49. Index of shareholders: (1) Unless the shareholder register is in such form as in itself to clearly constitute an index of the names of shareholders, every company having more than fifty shareholders shall prepare and keep a separate index of the names of its shareholders.

(2) In the event of any alteration in the shareholders register, necessary alteration shall also be made in the index prepared under Sub-section (1) within thirty days after the date of such alteration in the register.

(3) The index of shareholders shall be kept in such a manner that necessary information in respect of each shareholder can be readily found from the shareholder register.

(4) The index of shareholders shall be kept together with the shareholder register.

(5) If a company fails to comply with this Section, the company shall be deemed to have failed to comply with this Act.

50. Substantial shareholders: (1) If any person subscribes ordinary shares with full voting rights that are five percent or more of the paid up capital of any public company of which shares that person has held in his/her name or through his/her agent, that person shall be deemed to have his/her substantial shareholding in such company.

Provided, however, that in the case of a company having the paid up capital of more than two hundred fifty million rupees, any person shall be deemed to have the substantial shareholding despite that such person has subscribed one percent or more of the total paid-up capital of such company.

(2) A substantial shareholder of every public company shall give the company information setting out his/her name, address as well as full particulars of the shares registered in his/her or his/her agent's name, within

thirty five days after the knowledge of being a substantial shareholder of that company.

(3) If a person ceases to be a substantial shareholder of any public company, that person shall give the company information setting out his/her name, the date on which he ceases to possess the status of a substantial shareholder of that company and other particulars as well as the reason why he/she has ceased to be a substantial shareholder, within thirty-five days after the date of knowledge of that matter.

(4) Every public company shall maintain a separate register for the purposes of Sub- section (1), (2) and (3).

51. Inventory of shares, debentures and loans: (1) Every company shall prepare and maintain an inventory of the existing shareholders and debenture -holders and persons who ceased to be shareholders or debenture-holders as at thirty days prior to the holding of the.....[∞] annual general meeting.

(2) The inventory as referred to in Sub-section (1) spell outs, *inter alia*, the following particulars.

- (a) Authorized capital and number of shares of the company,
- (b) Issued share capital of the company,
- (c) Paid-up capital of the company,
- (d) Calls made on every share,
- (e) Total amount of installments paid,
- (f) Total amount due and recoverable,
- (g) Total amount paid on share and debentures as brokerage,
- (h) In the event of forfeiture of any shares, total number of such shares, reasons for forfeiture and date thereof,

[∞] Deleted by the Some Nepal Act (Amendment) Act, 2064

- (i) Loans borrowed from any bank, financial institution or any other person or guarantee furnished by the company,
- (j) Names and addresses of the existing directors.

(3) The inventory referred to in Sub-section (1) shall be signed by at least one director and be submitted to the Office within 30 days after the date at which the annual general meeting of the company is held and, in the case of a company not holding the annual general meeting within one year after the date at which the company has obtained permission to carry on such business as to require permission of the concerned body pursuant to the prevailing law, if the company carries on such business, and after the date of registration where such permission is not required; and if there is any alteration in the inventory once it is submitted pursuant to Sub-section (2) , only the details of such alteration can be submitted.

(4) If any alteration is made in the inventory, as referred to in sub-section (1), of a company not holding the general meeting details thereof shall be sent to the Office within six months of such alteration.

(5) Notwithstanding anything contained elsewhere in this Section, if any company mentions the details as referred to in Sub-section(1), as well, in the report required to be submitted pursuant to Section 78, such company shall not be required to send a separate inventory to this Office under this Section .

52. Lien on shares: A company may attach a share registered in the name of a shareholder and dividends payable thereon, as well, for all moneys due and payable by him/her to the company in respect of that share or for all moneys due and payable by him/her to the company under the prevailing law and recover such moneys by deducting the same from the dividends.

53. Payment of amount for shares: (1) An amount for a share shall be paid up within the period of a call made in accordance with the articles of association.

(2) In making a call pursuant to Sub-section (1), a company shall send every shareholder a written notice, in the prescribed format, specifying a time-

limit of at least thirty days and the installment payable by him/her, the place and time for payment. A public company shall also publish such notice, for at least three times, in a daily newspaper with national circulation.

(3) If a shareholder fails to pay the sum called and payable in respect of the share within the period as referred to in Sub-section(2), a notice shall be sent to the concerned shareholder, giving an additional period of three months after the date of expiration of that period, and specifying clearly that if payment is made within that period, it shall be accepted, along with interest at the prescribed rate and if that shareholder fails to make payment even within that period, his/her share shall be liable to be forfeited. In the case of a public company, such notice shall also be published in a daily newspaper with national circulation for at least three times. In the installment called is not paid even within the time-limit as mentioned in that notice, the company may forfeit all or the remaining shares after retaining the number of shares as fully paid up to the extent of the amount paid up on the shares in respect of which the company has given such notice or also to the extent of the amount of dividends, if any, attached in respect of such shares.

Provided, however, that where the company has already undergone liquidation or insolvency prior to the forfeiture of shares, any amount due and payable in respect of the shares liable to accordance with the prevailing law.

(4) Where any share is forfeited under Sub-section (3), the board of directors may refund the amount already paid up in respect of the share so forfeited and the amount equal to the dividends, if any attached in respect of such share, or issue the share to the extent covered by such amount; and where the amount is to be refunded, it has to be refunded within three months after the forfeiture of share.

(5) In the event of failure to make refund within three months pursuant to sub- section (4), interest chargeable on such amount after the expiration of that period shall also be paid.

(6) The shares forfeited under Sub-section (3) may be sold or otherwise disposed of in such manner as the board of directors may, subject to the articles of association, think fit.

(7) A company which has been making profits for a period of three consecutive years or more may, by a special resolution adopted at its general meeting determine that a call may not be made in respect of certain portion of its share capital not called on except in the case of liquidation or insolvency of the company.

(8) After a special resolution has been adopted under Sub-section (6), a call may not be made on the amount of share capital that is yet to be called on as mentioned in that resolution except where the general meeting, by adopting another special resolution, decides to make such call and except in the case of liquidation or insolvency of the company.

54. Payment of amount of shares held jointly: (1) Every partner shall pay the amount of call on the shares held jointly in proportion to his /her ownership.

(2) Except where there exists a duly executed deed indicating specific portion owned by each partner in the shares held pursuant to Sub-section (1), all the holders of such shares shall be deemed to have equal ownership thereon .

55. Ownership of shares and debentures: If a dispute arises about the ownership of any share or debenture issued by any company, the person whose name is registered in the share or debenture register maintained by the company shall, unless otherwise proved be regarded as the owner of such share or debenture.

56. Power of company to alter its share capital: (1) Subject to the provisions contained in its articles of association, any company may, by adopting a special resolution at its general meeting, make alteration in its share capital as follows:

(a) By increasing its authorized share capital by such amount as it thinks expedient by issuing new shares,

- (b) By consolidating or dividing all or any of its share capital into shares of larger or smaller amount,
- (c) By canceling the shares which, at the date the adopting of the resolution in that behalf, have not been taken or agreed to be taken by any person or the shares forfeited pursuant to Sub-section (3) of Section 53 and diminishing the amount of its share capital by the amount of the shares so canceled.

(2) When a special resolution for altering the capital pursuant to sub-section (1) is adopted, the memorandum of association and articles of association of the concerned company shall be deemed to have[∞] been amended to that extent.

(3) A submission, accompanied by the prescribed fees shall be made to the Office for the record of the resolution adopted pursuant to Sub-section (1) and the amendment to the memorandum of association and articles of association; and the Office shall accordingly record the alteration made in the capital of the company and the amendment made to the memorandum of association and articles of association and give information thereof to the company within seven days after such submission.

(4) A cancellation of shares, if any, made in pursuance of Clause (c) of Sub-section (1) shall not be deemed to have been made for purposes of the reduction of share capital of a company.

(5) If a company is required to increase its issued capital to the extent of its authorized capital, it may increase such capital by adopting an ordinary resolution at the general meeting.

(6) If a public company is required to increase its share capital under Sub-section (5) and issue its shares publicly, it shall fulfill the procedures specified in this Act and the prevailing law on securities.

[∞] Deleted by the Some Nepal Act (Amendment) Act, 2064

Provided, however, that in so issuing bonus shares and right shares that they may be subscribed by its existing shareholders and employees only or issuing shares pursuant to Sub-section (9), such company shall not be required to fulfill such procedures.

(7) A public company shall publish a notice on the issue of right shares, which may be subscribed by the existing shareholders only, in a daily newspaper of national circulation for at least three consecutive times prior to fifteen days of the issue of such shares.

(8) The existing shareholders shall have the first right to subscribed the shares issued under Sub-section (7) in proportion to their respective shareholding.

(9) Notwithstanding anything contained in Sub-section (8), no shareholder of a company existing for the time being shall have the first right over the following shares to be issued by the company:

- (a) Shares issued by the company for any consideration other than cash,
- (b) Shares issued to any person under any right or facility provided in accordance with the terms of an agreement concluded with the company,
- (c) Shares issued under an employee share scheme,
- (d) Shares issued in accordance with an agreement concluded between the company and its creditors,
- (e) Shares existed on converting preference shares into ordinary shares or debentures into shares by the company,
- (f) Shares issued in accordance with an agreement between the concerned parties in the course of management of the company, restructuring of its capital or loan or in the course of implementation of a restructuring program agreed upon between the relevant parties in accordance

with the prevailing law on insolvency or in the course of implementation of a program of conversion of a public company into another public company.

(10) No share capital shall be increased or bonus share issued by revaluating the assets of a company other than from profits made by the company or funds created out of profits.

(11) In issuing shares under this Section, a time limit of at least thirty-five days shall be given to the existing shareholders to subscribe the shares. If such shareholders fail either to subscribe the shares or to sell or transfer the right to subscribe shares to any one else within the said time limit or, such shares may be sold in any other manner as decided by the board of directors of the company.

57. Reduction of share capital: (1) If a company intends to reduce its share capital, it may, by adopting a special resolution to that effect at its general meeting, reduce its share capital by obtaining approval of the Court and making necessary amendment to or alteration in the memorandum of association and articles of association, accordingly.

(2) On receipt of approval of the Court pursuant to Sub-section (1), the company may reduce its share capital as follows:

- (a) By reducing the capital to such amount as has been paid up where calls for payment of amount on shares are not fully paid up,
- (b) By paying back any paid-up share capital,
- (c) By devaluating the face value of shares where the company has sustained a big loss or suffered a natural calamity.

(3) Notwithstanding anything contained in subsection (2), a company which has already become insolvent in accordance with the prevailing law shall not reduce its capital pursuant to this Section.

58. Procedures for obtaining approval of Court to reduce share capital: (1)

Where a company has adopted a special resolution for reducing its share capital pursuant to Section 57, it shall make a petition to the Court for an order confirming the reduction.

(2) Where a petition is made pursuant to Sub-section (1), the concerned company shall, prior to the hearing of such petition, publish a public notice in a daily newspaper of national circulation for at least three times, setting out the venue and date of hearing on the reduction of share capital of the company.

(3) Every person who is entitled to any debt or claim under the prevailing law at the time of commencement of the winding up or insolvency of a company shall be entitled to submit his/her claim and objection to the reduction of share capital of the company.

(4) The director or company secretary of a company shall, as ordered by the Court, submit to the Court a real and true list of creditors of the company, if any, setting out, inter alias, their names, addresses and amount of debt repayable to each of them, at the commencement of hearing of the petition for reducing the capital of the company .

(5) Irrespective of whether the creditors whose debts are yet to be discharged or determined, out of the creditors whose names are entered on the list submitted pursuant to Sub-section (4), do or do not consent to the reduction of capital in the case where the company admits the full amount of the debts or claims made by the creditors, or though not admitting it, agrees to make provision of moneys required to pay such amount and makes required provision for the same by executing a bond undertaking to pay the full amount within a certain date, then the Court may issue order confirming the reduction of the share capital .

(6) In taking action for approval on a proposed reduction of share capital which involves either the diminution of any liability in respect of unpaid share capital or the paying back to an shareholder of any amount paid for shares, the Court may, if, having regard to the circumstances and available evidence, it

thinks proper so to do, direct that the provisions of Sub-section (3) or (4) shall not apply to any specific creditor.

(7) If the list of creditors submitted pursuant to subsection (4) is found to contain any false statement or omission, the director of the company who submits such list and the officer who signs such list shall be liable to punishment under this Act.

Provided, however, that if the officer who signs such list proves that any omission or mistake was made without his/her knowledge or immediately when he/she knew such omission or mistake, he gave information to the Court for the rectification of such omission or mistake, prior to the making of an order by the Court under this Section or he exercised all reasonable care to avoid such omission or mistake, he shall not be liable to that punishment.

(8) If the Court is satisfied, with respect to the creditors who under Sub-section (1) are entitled to object to the resolution on reduction of capital, that either their consent to the reduction has been obtained or their debts or claim have been discharged or have been determined and are at the state of discharge, or have been secured, it may make an order confirming the reduction, specifying appropriate alters and conditions.

(9) Where the Court makes an order pursuant to Sub-section (8), it may, if it thinks proper so to do, order directing that the concerned company, of which resolution to reduce capital has been co confirmed, shall, for a specified periods, add to its names the last words thereof the words “ capital reduced” and publish necessary notice with a view to giving information to the general public about the reasons and causes for such reduction and other important information in regard thereto .

(10) Where, pursuant to Sub-section (9) , a company is ordered to add to its name the words “capital reduced”, those words shall, until the expiration of the period specified by the Court, be deemed to be an integral part of the name of the company.

(11) The contents of the terms contained in an order issued by the Court, pursuant to this Section, in the course of confirming a resolution for the reduction of capital shall be deemed to have ipso facto been incorporated in the memorandum of association and articles of association of the company; and the memorandum of association and articles of association shall be deemed to have been amended to that extent.

(12) Any director who knowingly conceals, hides or holds back the name of any creditor who, under this Section, is entitled to object to the resolution for reducing capital or knowingly prepares or submits a false statement on the amount of loan or claim or liability or conceals, hides or holds back such loan or liability or prepares or causes to prepare a false statement or any officer or employee of the company who abets to such act shall be liable to punishment under this Act.

(13) Where the share capital of a company is reduced pursuant to this Section, the director or company secretary of that company shall mention and authenticate that matter in each share certificate issued by such company.

59. Liability of shareholders in respect of reduced share capital: Except as otherwise provided for in this Section, a shareholder of the company, past or present, shall not be liable, in respect of any share mentioned in the order issued by the Court confirming the reduction of share capital, to pay any amount exceeding the difference between the amount actually paid on the share or the reduced amount, if any, which is deemed to have been paid thereon, as the case may be, and the fixed amount of such share.

Provided, however, that where the list of creditors entitled to object to the reduction of share capital submitted to the Court omits any such creditor and, after an order confirming the reduction of capital of the company has been made, the company is unable to pay the amount of debt of such creditor, the shareholder of the company shall be bound to pay the amount as mentioned in Sub-section (3) or (4).

(2) Notwithstanding anything contained in the proviso to Sub-section (1), where the list submitted to the Court omits the name or any claim of a creditor because of a fault or negligence of his/her own, the shareholders shall not be bound to pay such amount.

(3) A person who was a shareholder of a company at the date of issue by the Court of an order confirming the resolution for reducing the capital of the company shall be liable to pay an amount not exceeding the amount which he would have been liable to pay if the company had undergone insolvency and commenced insolvency proceedings on the day immediately before the said date.

(4) If a company is insolvent, and where an application is made by a creditor whose name is said to be omitted from the list of creditors submitted to the Court, along with the proof of omission of his/her name, the Court may, if it thinks fit, settle a list of shareholders who are liable to pay to the company the amount required for the repayment of loan of such creditor and issue an order to make calls on shares held by the shareholders settled on such list as if they were ordinary contributors in an insolvency process of the company.

(5) Notwithstanding anything contained elsewhere in this Section, no share holder shall be liable to pay an amount in excess of the face value of a share at the time of the subscription of such share by him/her.

60. Directors to be responsible in the case of loss of net worth of company: (1)

If the net worth of a public company is reduced to half the paid-up capital or less than that the directors shall prepare an appropriate strategy for the interest of the company and shareholders, as well, within thirty five days of the knowledge of this matter, and present a separate resolution thereon at the general meeting to be held immediately after the knowledge of such matter.

Provided, however, that where approval of the general meeting is required to implement such strategy, the extra-ordinary general meeting shall be called promptly.

(2) The directors of company who fail to prepare strategy or to present a resolution at the general meeting pursuant to Sub-section (1) or who knowingly permit the existence of the situation where such meeting is not called shall be liable to punishment under this Act.

(3) If it is held that the net worth of company has been reduced as mentioned in Sub-section (1) as a result of *mala fide* intention or malicious recklessness of any director, the director who commits such act shall also be liable to pay compensation for the same.

61. Prohibition on purchase by company of its own shares: (1) No company shall purchase its own shares (buy-back) or lend money against security of its own shares.

(2) Notwithstanding anything contained in Sub-section (1), in the following circumstances, a company may buy back its shares out of its free reserves available for being distributed as dividends, by giving information to the Office:

- (a) Where the shares issued by the company are fully paid up;
- (b) Where the shares issued by a public company have been listed in the Securities Board;
- (c) Where the buy-back of shares is authorized by the articles of association of the concerned company;
- (d) Where a special resolution has been adopted at the general meeting of the concerned company authorizing the buy-back;
- (e) Where the ratio of the debt owed by the company is not more than twice the capital and general reserve fund after buy-back of shares;

Explanation: For the purposes of this Clause, “debt” means all amounts of secured or unsecured debts borrowed by a company.

- (f) where the value of shares to be bought back by a company is not more than twenty percent of the total paid up capital and general reserve fund of that company;
- (g) Where the buy-back of shares is not in contravention of the directives issued by the Office in this respect.

(3) A resolution to be presented at the general meeting pursuant to Clause (d) of Sub-section (2) shall state the following matters:

- (a) The reason and necessity for the buy-back of shares;
- (b) A statement of the evaluation of possible impacts of the financial situation of the concerned as a result of the buy-back of shares,
- (c) The class and number of shares intended to be bought back;
- (d) The maximum or minimum amount required to buy back shares as referred to in Clause (c) and financial source of such amount;
- (e) The time limit for the buy-back of shares;
- (f) The mode of the buy-back of shares;
- (g) Such other necessary matters as specified by the Office and as required to be disclosed under the prevailing law, in respect of the buy-back of shares.

(4) Where a special resolution as referred to in Sub-section (3) is adopted by the general meeting, the concerned company may buy back its shares in any of the following manners within a period of twelve months of the adoption of that resolution:

- (a) Purchasing from the stock exchange;
- (b) Purchasing from the concerned employee of the company the shares allotted to him/her,

(c) Purchasing from the existing shareholders on a proportionate basis.

(5) Where a company buys back its own shares pursuant to Sub-section (4), it shall file with the Office a return containing the number of shares bought back, amount paid for the same and other necessary details within thirty days of the date of such buy-back.

(6) There shall be established a separate capital redemption reserve fund, to which a sum equal to the nominal value of the shares bought back pursuant to Sub-section (4) shall be transferred; and the amount of such fund shall be maintained as if it were the paid-up capital .

(7) Where a company buys back its shares pursuant to Sub-section (4), it shall cancel the shares so bought back within one hundred and twenty days of the date of such buy-back .

(8) Once a company buys back any class of shares pursuant to this Section, the company shall not re-issue the shares of that class, except for the issue of bonus shares or payment of its liability, prior to the expiration of two years after such buy-back.

(9) Notwithstanding anything contained elsewhere in this Section, no public company shall buy back its shares in a manner that such minimum number of shareholders or minimum paid-up capital as required to be maintained by that company becomes less or lower.

(10) Other conditions where a company cannot buy back its shares and other terms required to be complied with in the buying back of its shares shall be as prescribed.

62. Prohibition on providing loan or financial assistance by company to purchase its own shares: No company shall provide any loan or financial assistance of any kind to any person for purchasing its own shares or the shares of its holding company or getting entitlement to such shares in any manner.

Provided, however, that nothing contained in this Section shall prevent a company from providing loans to any employees of the company to purchase the fully paid up shares of that company or its holding company or acquire ownership over such shares in any manner, under a scheme of selling shares to its employees.

63. To obtain approval for commencing business: (1) No public company incorporated under this Act shall commence its business without obtaining the approval to carry on its business.

(2) A public company shall make an application, along with the evidence showing the full payment of calls on the shares, out of the amount of shares undertaken to be subscribed by its promoters, to the office for getting approval pursuant to Sub-section (1)

(3) Where an application is made pursuant to Sub-section (2) and it so proved that calls on the shares, out of the amount of shares undertaken to the Office shall grant approval for carrying on the business.

Provided, however, that if the amount paid up on shares is less than the amount mentioned in Sub-section (1) of section 11, the Office shall not grant such approval.

(4) without obtaining the approval to commence business pursuant to Sub-section(2), there shall not be carried out any act of publishing the except those acts such as convening the extraordinary general meeting, meeting of the board of directors and management of the company.

(5) Notwithstanding anything contained in Sub-section (2), where in the case of a company carrying on any specific business, the competent regulatory body empowered to regulate such business under the prevailing law has, while granting a license, specified any terms and conditions to be complied with prior to the commencement of such business, no approval to commence business shall be granted unless and until an evidence showing the compliance with such terms and conditions is submitted.

(6) Notwithstanding anything contained elsewhere in this Section, a private company may commence its transactions immediately upon receipt of the certificate of registration with the Office.

Provided, however, that where an approval is to be obtained from the concerned body pursuant to the prevailing law to carry on any specific transactions, the company shall commence its transactions only after obtaining such approval.

64. Prohibition on issue or sale of shares at a discount: (1) A company shall not issue or sell its shares at a discount.

(2) Notwithstanding anything contained in Sub-section(1), a company may, on the following conditions, issue or sell shares at a discount by adopting a special resolution at the general meeting to that effect, not being less than the percentage specified in that resolution:

- (a) In issuing or selling shares pursuant to a capital restructuring scheme of the company,
- (b) In issuing or selling shares pursuant to a scheme of converting loans borrowed by the company into shares with the consent of creditors;
- (c) In issuing or selling shares pursuant to an employee share scheme;
- (d) In issuing shares on such other conditions as approved by the Office.

65. Preference shares: (1) A company may issue preference shares as provided for in this Act, memorandum of association or articles of association.

(2) Except as provided in the articles of association, no shares issued pursuant to Sub-section (1) shall be converted into ordinary shares.

(3) In issuing preference shares pursuant to Sub-section (1), the following matters, *inter alia*, shall be disclosed:

- (a) Whether preference is given to receive dividends against ordinary shares;
- (b) Percentage of dividends receivable by preference shareholders;
- (c) Whether dividends get cumulated every year (cumulative) or profits are distributed only in a year wherein profit is made (non-cumulative);
- (d) Whether preference is given while paying amount of share in the event of liquidation of company;
- (e) Whether voting right is attached there to; and if voting right is attached, whether such right is available only in the case of preference share or also in other matters;
- (f) Whether voting right is available also in other matters pursuant to Clause (e) , the proportion to which such right is exercisable;
- (g) Whether preference shares can be converted into ordinary shares;
- (h) Whether the amount of preference shares can be redeemed (redeemable) or cannot be redeemed (irredeemable) after a certain period;
- (i) Whether, in redeeming preference shares, premium is payable on redemption.

(4) Where any redeemable shares are issued, the shares shall not be redeemed unless they are fully paid.

(5) No amount of preference shares shall be redeemed except out of profits which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made by the company for the purposes of the redemption.

(6) Where a premium is payable on the redemption of any redeemable preference shares, there shall be provided for a separate fund out of the profits of the company or out of the company's shares premium account, for the purposes of redemption of such shares.

(7) Except in cases where any redeemable preference shares are redeemed out of the proceeds of a fresh issue of shares pursuant to sub-section (5), while redeeming preference shares pursuant to this Act, a capital redemption reserve account shall be established and a sum equal to the nominal amount of the shares redeemed shall be transferred to that account, out of profits which would otherwise have been available for dividend.

(8) The capital redemption reserve account established pursuant to Sub-section (7) shall be maintained as if it were the paid-up capital.

(9) After the completion of the redemption of any preference shares redeemed pursuant to this Section, such shares shall be deemed to have, *ipso facto*, been cancelled.

(10) A company shall while redeeming any preference shares, follow such terms and procedures as provided by the articles of association of the company, subject to this Section; and such redemption of preference shares shall not be taken as reducing the amount of authorized share capital of the company.

(11) Where a company has redeemed or is about to redeem any preference shares, it shall have power to issue new shares up to the nominal amount of the shares so redeemed or to be redeemed.

(12) Where a company has redeemed any preference shares, the company shall give information thereof to the Office within one month of such redemption; and on receipt of such information, the Office shall record such information in the company register.

(13) Notwithstanding anything contained elsewhere in this Section, a company may issue new shares to its shareholders as fully paid bonus shares,

out of the capital redemption reserve funds established pursuant to Sub-section (7).

66. **Restriction on minor and person disqualified under law to make contract to be promoter:** (1) A minor who has not attained the age of sixteen years and a person who is not qualified to make contract under the law shall not be eligible to become the promoter of a company.

Provided, however, that this Section shall not be deemed to prevent a minor or a person who is disqualified under the law to make contract from acquiring the title to the shares of a company subscribed by the promoter, by virtue of succession or operation of law.

(2) Where any minor or any person who is disqualified under the law to make contract is to purchase or sell any shares or debentures of any company, the father, mother or husband or wife or legally appointed protector or guardian of such person shall do so.

Chapter 5

Meetings of Company

67. **General meetings of company:** (1) The general meetings of a company shall be as follows.

- (a) Annual general meeting, and
- (b) Extra-ordinary general meeting.

(2) A public company shall send a notice specifying the place, date and agenda of meeting to every shareholder at the address supplied by that shareholder to the company, in advance of at least twenty one days to hold the annual general meeting, and in advance of at least fifteen days to hold the extra- ordinary general meeting . A notice thereof shall also be published at least twice in a national daily newspaper.

Provided, however, that while calling any general meeting which has been adjourned, if such meeting is not transacting any new agenda, a notice of that

meeting published in a national daily newspaper in advance of at least seven days shall be deemed to have been duly given.

(3) No decision shall be taken in any general meeting on any matter which has not been notified in advance pursuant to Sub-section (2), except in the following circumstances:

- (a) Except as otherwise provided in the other sections of this Act, If the shareholders representing sixty seven per cent of the total shares of the company who are entitled to vote at the general meeting, attend in person or by proxy and vote in favor of taking a decision on any matter,
- (b) If the matter was already notified for being transacted in any general meeting which has been adjourned.

(4) Except in cases where the Office gives prior approval to hold the general meeting elsewhere, the general meeting of a public company shall be held either at the district where the registered office of such company is situated or at such place adjoining to the district of registered office as is convenient to most shareholders .

(5) A list indicating the name, address of the existing shareholders of the company and the number of shares held by them shall be kept at the meeting venue for inspection by the shareholders.

(6) The matters included in the agenda sent along with a notice of the general meeting shall be discussed and decided first at that meeting.

(7) The person chairing the general meeting may adjourn the meeting as required. Any matter which is notified, pursuant to this Act, before or after the day of holding the adjourned general meeting may be discussed and decided in such adjourned meeting.

(8) The original meeting and the adjourned meeting shall have the same powers. A resolution adopted at the adjourned meeting shall be deemed to be adopted on the date of holding that adjourned meeting.

(9) Where any corporate body has purchased shares in a company, a person appointed by such corporate body shall be entitled to attend and vote at the general meeting of the company, on behalf of such body.

(10) The proceedings at any general meeting shall not be void or invalid merely for reason of the accidental omission to give notice to any shareholders of any listed company or the non-receipt by any shareholder of notice sent at the address which he has supplied to such company.

(11) Notwithstanding anything contained elsewhere in this Section, matters pertaining to the general meeting of a private company and procedures thereof shall be as provided in the articles of association or the consensus agreement. Failing such provision, the provisions of this Act shall apply.

(12) Other provisions relating to the procedures of general meeting shall be as contained in the articles of association of a company.

68. Directors required to be present: Every director of a company shall be present in the general meeting as far as possible.

69. Legality of meeting: Before every general meeting commences, the shareholders present therein shall ascertain whether it has been convened in accordance with this Act and the articles of association; and a general meeting shall be deemed to have been duly called even if any other law has not been observed with respect thereto, provided a notice has been sent to all shareholders pursuant to Sub-section(2) of Section 67 and the meeting attended by the required quorum as referred to in Section 73 agrees to hold it .

70. Cases where attendance or voting in meeting is restricted: (1) No person shall be entitled to attend and vote in any general meeting, in the capacity of a shareholder, either in person or by proxy on any discussion to be held in respect of any terms and conditions entered into or to be entered into between him/herself and the company.

(2) No director or his/her partner or his/her proxy shall be entitled to vote on any discussion to be held at any General Meeting in respect of the

responsibility for any act done or omitted to be done or done wrongfully by him/her or in respect of his/her own appointment, dismissal, transfer or confirmation, with respect to the provision of , or reduction or increment in remuneration, allowance or bonus or in respect of any agreement, contract or arrangement regarding his/her employment or anything in which his/her interest or concern is involved.

(3) Any shareholder who has not paid calls on the shares shall not be entitled to attend and vote in the general meeting.

(4) Where any shareholder appoints a director of the concerned company as his/her proxy pursuant to Sub-section(2) of Section 71, such director shall not be entitled to vote in the general meeting ,as a proxy of any one , on any matter in which his/her interest or concern is involved or on the matter of his/her appointment.

(5) Notwithstanding anything contained in this Act or the prevailing law, where a bank or financial institution incorporated under the prevailing law, which institutes legal action against a shareholder, who has borrowed a loan from such bank or financial institution against the pledge or security of the shares held by him/her, for his/her default in repaying the loan, writes to the concerned company to prevent him/her from exercising voting right in respect of shares, then the company shall prevent such shareholder from exercising voting right in respect of the shares held by him/her for a period until he/she repays the loan.

71. Right to vote in general meeting: (1) Except as otherwise provided in this Act or the articles of association of a company, only the person whose name is registered as a shareholder in the shareholder register shall, subject to Section 70, be entitled to attend the general meeting and cast votes at the rate of one vote for each share held by him/her.

(2) Except in cases where the articles of association of a company prohibit the proxy of a shareholder from exercising the right to vote, any

shareholder may, subject to this Section , appoint another person as his/her proxy to attend the general meeting and vote instead of him/herself.

(3) Subject to Sub-section (1) or (2) , where a shareholder who is entitled to vote is not able to personally attend the meeting, he/she may appoint a proxy to vote in his/her stead, by an instrument of proxy executed in the prescribed format and signed by him/her and the proxy so appointed shall be entitled to attend or vote in the meeting , subject to the provisions contained in Section 72.

(4) where two or more persons jointly hold any shares, only the vote cast or instrument of proxy executed by the partner appointed by such partners or by the proxy appointed by that partner pursuant to Sub-section (2), and failing such appointment of any partner, by the partner whose name appears first in the serial order, out of the partners, in the shareholder register maintained pursuant to Section 46 shall be valid.

72. Provision on voting in election of director: (1) Except as otherwise provided in the articles of association, on a poll in election of directors, every shareholder shall be entitled to cast such number of votes as may be set after multiplying the number of shares held by him/her by the number of directors to be appointed; and the director who casts such votes may cast all his/her votes for a single candidate or may cast votes in a manner that his/her votes are divided for more than one candidate as indicated by him/her.

(2) A corporate body entitled to appoint a director pursuant to this Act or articles of association may appoint directors in proportion too its shareholding, and in such a case, it shall but be entitled to cast vote in the election.

Provided, however, that a corporate body which is not able to appoint even a single director in proportion to the number of shares and the total number of directors or which fails to appoint a director in exercise of the power conferred by this Sub-section may, like other shareholder, take part in the election of directors representing shareholders, cast vote or file candidacy up to the

number of directors that can be elected in proportion to the shares held by that body in such election.

73. Quorum: (1) A quorum for the general meeting of a private company shall be as specified in the articles of association of such company.

(2) Unless the articles of association of a public company provides for a larger number for the quorum, no proceedings of the meeting of the public company shall be conducted unless at least three shareholders of the total shareholders, representing more than fifty per cent of the total number of allotted shares of that company, are present either in person or by proxy.

(3) Where a meeting cannot be held because of quorum as referred to in Sub-section (2), and the meeting is called next time by giving a notice of at least seven days, nothing shall prevent the holding of such a meeting if at least three shareholders, representing twenty five percent of the total number of allotted shares of the company, are present either in person or by proxy.

(4) Notwithstanding anything contained elsewhere in this Section, in the case of a company incorporated under the proviso to Sub-section (2), of Section 3 or a company incorporated under Sub-section(1) of Section 173, the presence of three shareholders as mentioned in Sub-section(2) or (3) shall not be mandatory.

74. Discussion and decision: (1) A general meeting shall be chaired by the Chairperson of board of directors and, in his/her absence, by the person nominated by the directors from amongst themselves.

(2) Every matter to be discussed in a general meeting shall be presented in the form of resolution. The chairperson of the meeting shall declare whether a resolution has been adopted or not.

(3) The opinion of majority of the shareholders present in the meeting shall be deemed to be the decision of that meeting on every matter put to the vote. Such voting may be taken in such manner including a show of hands,

voice voting, division of shareholders in groups or poll (use of ballot paper) as well as other appropriate method as prescribed by the Chairperson.

Provided, however, that in the case of a special resolution, the resolution shall be deemed to have been adopted by the meeting only if the shareholders representing seventy five per cent shares out of the shareholders present in the meeting vote in favour of the resolution.

(4) If the votes are evenly divided for and against at a general meeting, the Chairperson of the meeting may exercise the casting vote.

Provided, however, that the Chairperson shall not be deprived of the right to vote in the capacity of shareholder.

75. Minutes to be kept: (1) Every company shall keep minutes of the proceedings of general meeting, by making entries thereof in a separate book; and the minutes shall be signed by the chairperson of the meeting concerned and by the company secretary, if any. In the case of a company which has no company secretary, the minutes shall be signed by the Chairperson of the meeting concerned and by a representative of shareholders appointed by a majority of the general meeting.

(2) While keeping the minutes as referred to in Sub-section (1), matters such as the manner in which the notice of the meeting was issued, the number of shareholders present, the percentage of representation of the total shares, the result of voting, if any, shall all be set out in the minutes.

(3) The minutes set down pursuant to this Section shall be sent to the shareholders within thirty days of the holding of the general meeting.

Provided, however, that if any company publishes the minutes in a national daily newspaper, it need not send the same to the shareholders.

(4) The minutes of proceedings of the general meeting kept pursuant to Sub-section (1) shall be kept at the registered office of the company. If any shareholder wishes to inspect such minutes during office hours, the company

secretary or such other employee as designated by the company shall allow such inspection.

(5) If any shareholder wishes to get a copy of any minutes of the general meeting, the company shall provide such copy by collecting such fees as specified by its articles of association.

76. Annual general meeting: (1) Every public company shall hold its first annual general meeting within one year after it is permitted to commence its business, and thereafter it shall hold the annual general meeting every year within six months after the expiry of its financial year.

(2) If any public company fails to call the annual general meeting even within three months after the expiry of the time-limit referred to in Sub-section(1), the office may give direction to call the annual general meeting of such company.

(3) If the company fails to call the annual general meeting even within three months after the receipt of the direction as referred to on Sub-section(2), any shareholder may make a petition, setting out the matter, to the court. Where such petition is made, the Court may either cause to hold the annual general meeting or issue any other appropriate order.

(4) Notwithstanding anything contained in Sub-sections (1) and (2) of section 73, the shareholders present in the general meeting called pursuant to the order of the court under Sub-section (3) shall be deemed to be a quorum.

77. Matters to be presented and decided in annual general meeting: (1) The directors shall present the annual financial statements as audited, auditor's report and director's report at the annual general meeting of a public company.

(2) If the shareholder or shareholders representing at least five per cent of the total number of votes shall so desire, he/they may, by submitting an application to the directors prior the issue of a notice under Sub-section (2) of Section 67, cause any matter to be presented at the annual general meeting for discussion and decision.

(3) At least twenty one days prior to the holding of the annual general meeting, every public company shall make arrangement so that the shareholders can inspect and obtain copies of the annual financial statement, directors' report and auditors' report as referred to in Section 84 and publish a notice in a national daily newspapers for information thereof.

(4) Information of the statements and reports as referred to in Sub-section (3) may also be disseminated through electronic communication media, as per necessity.

(5) If any shareholder makes a request for a copy of the annual financial statement, directors' report and auditor's report as referred to in Sub-section (3), the company shall provide a copy of such reports or statements to such shareholder.

(6) Except as otherwise provided in this Act, matters of distribution of dividends to shareholders, appointment of directors and their remuneration, appointment of auditor and his/her remuneration of such other items as required by this Act or the articles of association to be decided by the annual general meeting of the company can be presented at and decided by that meeting.

Provided, however, that on the rate of dividends to be distributed to the shareholders shall be made in a manner to exceed the rate of such dividends fixed by the board of directors.

78. Report to be submitted to Office: Every public company shall prepare a report indicating the following matters and submit the same to the Office in advance of at least twenty one days before the holding of the annual general meeting. Such report has to be approved by the board of directors and certified by the auditor of the company.

(a) The total number of the shares allotted,

- (b) Number of fully paid up and unpaid shares out of the allotted shares out of the allotted shares,
- (c) Particulars of director, managing director, auditor, executive chief and manager of the company, and amount of remuneration, allowance and facility paid to them,
- (d) The names of individuals or corporate bodies subscribing five percent or more of the paid up capital of the company, and details of shares or debentures held in their names,
- (e) The total proceeds of the sale of shares, and particulars of the new shares and debentures issued and raised by the company in the financial year concerned,
- (f) The amount due and payable by the director or substantial shareholder to his/her close relative to the company,
- (g) The details of payment made or to be made against the sale of shares or for any other matters,
- (h) The amount of loans borrowed from banks and financial institutions and of principal and interest due and payable,
- (i) The amount claimed to be receivable by the company or payable by the company to any other person to details of, lawsuits, if any, ongoing in this respect,
- (j) The number of expatriate employees engaged in the management of the company and at other levels, and remuneration, allowances and facilities paid to them,
- (k) The number of expatriate employees engaged in the management of the company and at other levels, and remuneration, allowances and facilities paid to them,
- (l) Where any agreement has been entered into between the company and any foreign body or person on investment,

management or technical services or other matter for a period of more than one year, particulars thereof and the particulars of the dividend, commission, fee, charge and royalty, as well paid under such agreement in the financial year concerned,

- (m) A statement of the management expenditures of the company in a financial year,
- (n) The amount of dividends yet to be claimed by the shareholders,
- (o) A declaration that the company has fully observed this Act and the prevailing law,
- (p) Other necessary matters.

79. Preparation of documents for annual general meeting: At least twenty one days prior to the holding of the annual general meeting, every public company shall prepare the annual financial statements, directors report, auditor's report to be discussed in the meeting, the report prepared under Section 78 and the resolutions to be presented in the meeting and arrange to so keep the same at its registered office that the shareholders can inspect them; and if any shareholder makes an application for a copy thereof, a copy thereof shall be provided to him/her.

Provided, however, that the resolutions to be presented in the meeting as special resolution shall be sent, along with a notice of the meeting, at the address of the shareholder.

80. Return of annual general meeting to be forwarded to Office: (1) Every public company shall, within thirty days of the holding of the annual general meeting, forward to the Office a return indicating the number of shareholders present in the meeting, a copy of the annual financial statement, director's report and auditor's report and resolution adopted by the meeting.

(2) Except as otherwise provided in this Act, every private company shall submit a copy of the annual financial statement certified by the auditor to the Office within six months of the completion of its financial year.

81. Fine to be imposed in case of failure to submit returns: (1) Any return, notice or information required to be provided by the company to this Office or information required to be provided by the officer or shareholder to the company pursuant to this Act shall be provided by the director of the company or the officer or shareholder who has the duty to provide such return, notice or information to the Officer or the company, as the case may be, within the time limit, if any, prescribed by this Act for the provision of such return, notice or information.

(2) The following director of a company or its officer who is in default in providing the return, notice, information or reply as referred to in Section *51, 78, 80, 120, 131 or 156 within the time limit as referred to in Sub-section (1) shall be punished by the Registrar with fine, as follows:

- (a) A fine of one thousand rupees if the paid up capital of the company is up to two million five hundred thousand rupees, a fine of two thousand rupees if the paid up capital of the capital is up to often million rupees, and a fine of five thousand rupees if the paid up capital of the company is more than ten million rupees, for a period not exceeding three months after the expiry of the time limit;
- (b) A fine of one thousand five hundred rupees if the paid up capital of the company is up to two million five hundred rupees, a fine of three thousand rupees if the paid up capital of the capital is up to ten million rupees, and a fine of seen thousand rupees if the paid up capital of the company is more than ten million rupees, for and

* Amended by the Some Nepal Act (Amendment) Act, 2064

additional period not exceeding three months after the expiry of the time limit as referred to in Clause (a);

- (c) A fine of two thousand five hundred rupees if the paid up capital of the company is up to two million five hundred thousand rupees, a fine of five thousand rupees if the paid up capital of the capital is up to ten million rupees, and a fine of ten thousand rupees if the paid up capital of the company is more than ten million rupees, for an additional period not exceeding six months after the expiry of the time limit as referred to in Clause(b);
- (d) A fine of five thousand rupees, for each year, if the paid up capital of the company is up to two million five hundred thousand rupees, a fine of ten thousand rupees , for each year, if the paid up capital of the capital is up to ten million rupees, and a fine of twenty thousand rupees, for each year, if the paid up capital of the company is more than ten million rupees, in cases where even the time limit as referred to in Clause (c) has also expired.

(3) In the case of a company not distributing profits which is in default in providing such statement, in formation or notice within the time limit as referred to in Sub-section (1), the director or officer of such company shall be liable to the same fine as is imposable on a company of which paid up capital is up to ten million rupees.

(4)Any director, office or shareholder who is liable to pay the fine as referred to in Sub-section (2) shall pay it too the Office and submit to the Office or the concerned company such returns as required to be forwarded.

(5) In calculating the period of expiration of the time limit pursuant to Sub-section (2), it shall be calculated from the date of commencement of this Act.

(6) Any director, officer or shareholder of a company who is in default in providing such other statement, notice or information as is required to be forwarded to the Office pursuant to this Act shall be punished with a fine of two hundred rupees for every month, after the expiration of one month of the date of expiry of the time limit within which such statement, notice or information is required to be provided.

82. Extra-ordinary general meeting: (1) The board of directors of a company may convene an extra-ordinary general meeting if it deems necessary.

(2) If, in the course of examining the account of a company, it is deemed necessary to call an extra ordinary general meeting for any reason, the auditor may request the board of directors to call such meeting; and if the board of directors fails to call the meeting accordingly, the auditor may make an application, setting out the matter, too the Office; and if an application is so made, the Office may call the extra-ordinary general meting of the company.

(3) If the shareholders holding at least ten percent shares of the paid-up capital of a company or at least twenty five per cent shareholders of the total number of shareholders make an application, setting out the reasons therefore, to the registered office of the company for calling an extra-ordinary general meeting of the company.

(4) If the board of directors does not call the extra-ordinary general meeting within thirty days from the date on which an application is made pursuant to Sub-section (3), the concerned shareholders may make a petition to the Office setting out the matter; and if such petition is made, the Office may cause to call such meeting.

(5) If the Office deems necessary to call an extra-ordinary general meeting in view of the findings of any inspection or investigation or for any others reason, it any itself call or cause there board of directors to call such meeting.

83. Special resolutions to be presented: Special resolutions shall be presented in the general meeting of a company for decision on the following matters:

- (a) Increasing the authorized capital of the company,
- (b) Decreasing or altering the share capital of the company,
- (c) Altering the name or main objectives of the company,
- (d) Amalgamating one company into another company,
- (e) Issuing bonus share,
- (f) Buying back of own shares by the company,
- (g) Selling shares at a discount,
- (h) Converting a private company into a public company or *vice versa*,
- (i) Such other matter in respect of which the company is required by this Act or the articles of association to adopt a special resolution.

84. Provisions on sending abstract of financial statement to shareholders: (1)

Notwithstanding anything contained elsewhere in this Act, a company listed in the stock exchange shall not be required to send the annual financial statement and director's report to its shareholders or debenture-holders

Provided, however, that an abstract of financial statement prepared pursuant to Sub-sections (2) and (3) shall be sent to every shareholder along with the notice of annual general meeting.

(2) The abstract of financial statement required to be sent pursuant to the proviso to Sub-section (10) shall be prepared on the basis of the annual financial statement of the company and the director's report. The format of such statement shall be as specified by the Office based on the suggestions of the body specified to set accounting standards under the prevailing law.

(3) The abstract of financial statement shall contain, *inter alia*, the following matters:

- (a) Matter indicating that the abstract of annual financial statement is only an abstract of the annual financial statement of the company and their director's report,

- (b) An opinion of the company's auditor as to whether or not the abstract of annual financial statement is in consonance with the annual financial statement of the company and the director's report and whether or not the abstract is consistent with the format specified pursuant to this Section,
- (c) Matter as to whether or not the auditor has made any remarks about the annual financial statement of the company and, if such remarks have been made, full details of such remarks and such materials as required to understand such remarks,
- (d) In cases where the auditor has mentioned in his/her report anything about the inadequacy of the accounts and accounting returns or about the company's accounts not being verifiable with the records and returns maintained by the company or about the non-receipt of any such information and explanation as sought, full details thereof.

(4) Instead of sending the abstract of annual financial statement to the shareholders at their personal addresses pursuant to Sub-section (1), the company may publish it at least twice in a national daily newspaper at the time of publishing the notice of meeting.

(5) In the event of publication of the abstract of annual financial statement pursuant to Sub-section (4), there shall not be required to send the abstract at the personal addresses of shareholders.

85. Registration number to be mentioned: A company shall mention its registration number in all such reports, statements, records or other documents as required to be submitted by it to the Office for the purposes of this Act.

Chapter 6

Board of Directors

86. Board of directors and number of directors: (1) The appointment and number of directors of a private company shall be as provided in its articles of association.

(2) Every public company shall have a board of directors consisting of a minimum of three and a maximum of eleven directors.

(3) In forming the board of directors pursuant to Sub-section (2), at least one independent director, in the case of the number of directors not exceeding seven, and at least two independent directors, in the case of the number of directors exceeding seven, shall be appointed from amongst the persons who have the knowledge as prescribed in the articles of association of the company and gained knowledge and experience in the subject related with the business of the company concerned.

(4) Any one director selected by the directors from amongst themselves shall be the Chairperson of the board of directors.

87. Appointment of directors: (1) The directors of a company shall be appointed by the general meeting of the company, subject to the provisions contained in Section 89 and the articles of association.

Provided however, that:

(1) The directors shall be appointed by the promoters pending the holding of the first annual general meeting of the company.

(2) If the office of any director appointed by the annual general meeting is vacated for any reason, the board of directors shall appoint another director in that vacancy.

(2) Notwithstanding anything contained in Sub-section (1), in the case of a company any shares in which a corporate body has subscribed, the corporate body may appoint a director in proportion of the total number of

directors of the company and the number of shares subscribed by such body and also an alternate director to attend and vote in a meeting of the board of instead of every such director in cases where such director will not be in a position to attend the meeting of the board for any reason.

(3) Where any director appointed pursuant to Sub-section (2) is not able to attend a meeting of the board of directors, such director shall give information thereof to his/her alternate director and the board of directors. In such case, the alternate director shall be entitled to attend, and vote in, the meeting of the board of directors.

(4) Except in the case referred to in Sub-section (1), any alternate director appointed pursuant to Sub-section (2) shall not be entitled to attend, and vote in, a meeting of the board of directors.

88. Shares qualification of director: If the articles of association of a company specify any number of shares required to be held by a person for his/her appointment as director of the company, the person who becomes director shall hold such number of shares. Failing any provision specifying such number of shares, any such person shall hold at least one hundred shares.

Provided, however, that any director who is appointed pursuant to Sub-section (3) of Section 86 and Sub-section (2) of Section 87 shall not be required to hold such shares.

89. Circumstances where one is disqualified to be appointed to, or continue to hold, office of director: (1) Any of the following persons shall not be eligible to be appointed to the office of director:

- (a) Who is below Twenty one years of age, in the case of a public company;
- (b) Who is of unsound mind or is insane;
- (c) Who is a declared insolvent and a period of five years has not lapsed;

- (d) Who is convicted of an offense of corruption or of an offense involving moral turpitude.

Provided, that in the case of a private company, a period of three years has not lapsed from the date of such sentence,

- (e) who is convicted of an offense of theft, fraud, forgery or embezzlement or misuse of goods or funds entrusted to him/her, in an authorized manner, and sentenced in respect thereof, a period of three years has not elapsed from the expiry of the sentence;
- (f) who has personal interest of any kind in the business or any contract or transaction of the concerned company;
- (g) who is already a director, substantial shareholder, employee, auditor or adviser of another company having similar objectives or has personal interest of any kind in such company;

Provided, however, that such person of a private company may become a director of another private company having similar objectives.

- (h) Who is a shareholder that is held to have failed to pay any amount due and payable by him/her to the concerned;
- (i) In the case of a person who has been sentenced to punishment pursuant to Section 160, a period of one year is not lapsed from the date of sentence, or in the case of a person who has been sentenced to punishment pursuant to Section 161, a period of six months has not lapsed after the date of sentence;
- (j) In the event that the prevailing laws prescribed any qualification or disqualification in the case of a company

carrying on any specific business, who does not possess such qualification or suffers from such disqualification;

- (k) Who is already a director of any company which has not submitted such returns and reports as required to be submitted to the Office under this Act, for any continuous three financial years;
- (l) Who is holding the office of director receiving from another listed company any remuneration or facility, other than a meeting allowance and actual expenses to be incurred in coming to, going from, and staying in, the place of meeting.

(2) Any of the following persons shall not be eligible to be appointed to the office of independent director:

- (a) Who is a person as referred to in Sub-section(1);
- (b) Who is a shareholder of the concerned company;
- (c) Who has not obtained at least bachelor degree in a subject that is related to the business to be carried on by the concerned company and gained at least ten years of experience in the related field or in the company management affairs or who has not obtained at least bachelor degree in finance, economics, management, accounts, statistics, commerce, trade or law and gained at least ten years of experience in the related field;
- (d) Who is an officer, auditor or employee of the concerned company or a period of three years has not lapsed after his/her retirement from any such office;
- (e) Who is the close relative of the office of the concerned company;

- (f) Who is an auditor of the concerned company or his/her partner.

(3) No person shall continue to hold the office of a director in any of the following circumstances;

- (a) If one suffers from any disqualification for appointment to the post of director as mentioned in Sub-section (1) or (2);
- (b) If the general meeting passes a resolution to remove him/her from the office of director,
- (c) If the resignation tendered by the director is accepted by the board of directors;
- (d) If one is held by a court to have done any act involving dishonesty or ulterior motive in the activities of the company;
- (e) If one is held by a court to have done any act prohibited by this Act from being done by a director or to have failed to do any act required to be done under this Act;
- (f) If one is blacklisted by a competent body pursuant to the prevailing law for his/her default in repaying a loan of any bank or financial institution, and the period of such black listing has not expired.

(4) Prior to holding any person to be disqualified for being appointed to the office of a director or holding such office, the company shall give information thereof to him/her and provide him/her with a reasonable opportunity to defend him/herself.

90. Term of office of directors: (1) The tenure of office of a director of a private company shall be as provided in its articles of association

(2) The tenure of office of a director of a public company shall be as specified in its articles of association, which shall not exceed four years.

Provided that:

- (1) A director appointed by the Government of Nepal or a corporate body shall hold office so long as the Government of Nepal or the appointing body desires.
- (2) A director appointed pursuant to Clauses (1) and (2) of the proviso to Section 87 shall hold office only until the holding of the annual general meeting.
- (3) The term of office of a director appointed to the office of any director which has fallen vacant before the expiry of his/her term of office shall be only the remainder of the tenure of office of that director whose office has so fallen vacant and in whose place one is appointed.

(3) Notwithstanding anything contained in the prevailing law or articles of association, a person retired from the office of director on expiry of his/her tenure of office shall be eligible for reappointment to the office of director.

91. Remuneration, allowance, reward etc. of directors: (1) The meeting allowance to be receivable by the directors for attending a meeting, their monthly remuneration, daily allowance and traveling allowance or other facility shall be as determined by the general meeting.

(2) The general meeting of any company may, by adopting a special resolution, grant a reward in a sum not exceeding three per cent of the net profits after payment of income tax to the directors who work full time for the company so as to encourage them.

Provided, however, that where, on final assessment of tax under the prevailing law, the company has to pay additional income tax, the company shall recover the amount of such additional tax from the directors, who have received such reward, on a proportional basis up to the extent of the amount of reward received by them.

(3) Pending the holding of the first annual general meeting, the board of directors may determine the remuneration and facilities of the managing director or other directors who work full time for the company.

(4) Except where the general meeting of a listed company so permits, in the event that any director of a listed company is retired from or relieves of his/her office, the company shall not make any kind of payment as compensation for such relief or retirement.

92. Disclosure by directors: (1) A director shall, no later than seven days after assuming the office of director, disclose in writing to the company the following matters:

- (a) If he/she or his/her close relative has direct involvement or any kind of personal interest in any kind of sale and purchase or other kind of contract related with the transactions of the company;

Explanation: For the purposes of this Clause, “direct involvement” means and includes a situation where the director or his/her close relative is a promoter of or holds more than ten per cent shares of a company or private firm or partnership firm or a director of a company involved in such transaction.

- (b) If he/she has any kind of interest in the appointment of the managing director, company secretary, officer of the company;
- (c) If he/she is a director of any other company;
- (d) If he/she has made any dealing in the shares or debentures of the company or of its holding or subsidiary company, about matters of such dealing.

(2) In making disclosure pursuant to Sub-section(1) , a copy of the written agreement, if any, concluded between the company and the director or

his/she close relative shall be submitted, and failing such agreement, substantial and necessary matters concerning the transaction or interest or involvement shall be set out.

(3) The company shall submit to the Office the information as referred to in Sub-section (1) within seven days of the receipt of such information; and upon receipt of such information, the Office shall record the same in a separate register maintained for this purpose.

(4) If any director has an interest directly or indirectly linked to any kind of contract, lease, transaction or agreement entered or to be entered with the concerned company or its subsidiary company or comes to his/her knowledge that such interest will be so linked, that director shall disclose that matter to the company promptly, setting out the extent and kind of such interest.

(5) If any director gives written information to the company that he be considered to have his/her personal interest in a transaction with any certain person, that director shall be deemed to have disclosed his/her personal interest in any transaction or contract to be done or made with such person.

93. Transaction with company in which director is involved: (1) Except as otherwise provided this Section, no public company shall, without approval of the general meeting, do any significant transaction with its director or his/her close relative or substantial shareholder or no subsidiary company shall, without approval of the general meeting of its holding company, do any significant transaction with any director or his/her close relative or substantial shareholder of the holding company.

Explanation: For the purposes of this Section, “significant transaction” means a transaction of sale, purchase, exchange and contract the value of which, at the time of doing the transaction, exceeds one hundred thousand rupees or five percent of the total assets of the company, whichever is the lesser, and this term also includes a rental transaction amounting to one hundred twenty thousand rupees or more annually.

(2) If any transaction is done in contravention of Sub-section (1), any amount or benefit derived from that transaction directly or indirectly shall be returned to the company; and if any loss or damage is caused from such transaction to the company, the person deriving benefit from such transaction shall also pay compensation for such loss or damage.

(3) Notwithstanding anything contained elsewhere in this Section, the provision of Sub-section (1) shall not apply to the in-kind property acquired as follows:

- (a) While acquiring such property by a holding company from its wholly owned subsidiary company;
- (b) While acquiring such property by a subsidiary company wholly owned by a holding company from another subsidiary company wholly owned by the same holding company;
- (c) While doing transaction at the prevailing market price in the ordinary course of business transaction of the company.

94. Directors to make disclosure in shares: (1) If a person, while holding the office of director, acquires title to any shares or debentures of the company or of a company which is a subsidiary or holding company of that company or of another subsidiary company of the holding company, in any manner, that person shall give information as follows on that matter to the company:

- (a) Details of his/her title;
- (b) Number of shares of each class in the concerned company or another company to or in which he/she has title or interest while holding the office of director and details of amount of debentures of each class.

(2) If the following situation occurs, any director of a company shall give written information thereof to the company in which he/she is a director no later than fifteen days after such situation comes to his/her knowledge:

- (a) If, for any reason, he/she is going to acquire title to any shares or debentures of the company in which he/she is a director or of a company which is a subsidiary or holding company of that company or of another subsidiary company of the holding company, in any manner , or he/she is going to lose his/her title;
- (b) If he enters into an agreement to sell the shares or debentures, as referred to in Clause (a), held in his/her name;
- (c) If he/she assigns to any other person the authority granted by the company in which he is a director to him/her to subscribe the shares or debentures of such company;
- (d) If a company which is a subsidiary or holding company of the company in which he/she is a director or another company which is a subsidiary of such company or other subsidiary of the holding company grants authority to him/her to subscribe the shareholders or debentures of such company;
- (e) If he assigns to any other person the authority to subscribe the shares or debentures or the company as referred to in Clause (d).

(3) While forwarding information to the company pursuant to Sub-section (2), such information shall also clearly set out the number of shares or debentures, amount and class thereof.

(4) The company shall maintain a separate register to record the information received pursuant to Sub-section (2) and (3).

(5) The provisions contained in this Section shall also apply to the close relative of a director as if such relative were a director.

95. Powers and duties of board of directors: (1) Subject to the provisions contained in this Act and the articles of association and the decisions of the general meeting, the directors shall manage all transaction, exercise of powers and perform duties of the company through the board of directors collectively.

(2) Except in accordance with a decision of the general meeting no director of a public company shall do anything yielding personal benefit to him/her through the company.

Provided, however, that a private company may make a reasonable provision on the benefit which the director may derive through the company, as mentioned in the memorandum of association and articles of association or consensus agreement.

(3) Except as otherwise provided in this Act, the memorandum of association and articles of association or the consensus agreements, the case of a private company, the board of directors may appoint any director from amongst themselves or any employee of the company as its representative and so delegate to him/her any or all of its powers, *inter alia*, to do any act or thing, make correspondences or sign bills of exchange or cheques etc. On behalf of the company that such powers are to be exercised individually or jointly. In so delegating the powers, at least one director and their company secretary, if any, shall certify such delegation, pursuant to a decision of the board of directors.

(4) A company may recover damages from a person acting in the capacity of director or representative of the company for any loss or damage caused to the company from any act or action done by such person beyond his/her jurisdiction.

(5) If any person enters into any transaction with the director or with a representative as referred to in Sub-section (3) despite the knowledge or having reason to believe that such director or representative is dealing with any transaction for his/her personal interest or for causing loss or damage to the company, such person shall not be entitled to make any claim against the company in respect of such transaction.

(6) Notwithstanding anything contained in Sub-section (3), the board of directors shall not delegate the following powers conferred to the company and shall exercise such powers only by means of resolutions passed at meetings of the board of directors :

- (a) The power to make calls on shareholders in respect of amount unpaid on their shares;
- (b) The power to issue debentures;
- (c) The power to borrow loans or amount otherwise than on debentures;
- (d) The power to invest the funds of the company;
- (e) The power to make loans.

(7) The provision of Clause(e) of Sub-section(6) shall not apply to loans to be let and deposits to be received in the ordinary course of business transaction by the companies carrying on banking and financial business.

(8) If the board of directors considers necessary to form a sub-committee for the discharge of any specific business, it may form one or more than one sub-committee as required and get such business discharged.

96. Appointment of managing directors, and management of company: (1) The directors may, subject to the articles of association, appoint one managing director from amongst themselves.

(2) The functions, duties and powers of the managing director shall be as mentioned in the articles of association or as prescribed by the board of directors.

(3) While appoint a managing director and other director talking responsibility of the management of the company pursuant to Sub-section (1), there shall be entered into an agreement in writing stipulating the terms of appointment, remuneration and facilities; and no facilities or payment other than the remuneration and facilities specified in such agreement and any other

facilities receivable as specified by the general meeting shall be provided or made.

(4) The term of agreement as referred to in Sub-section (3) shall not exceed four years at a time.

(5) There shall be made such arrangement that the shareholders can inspect, free of charge, the agreement entered into with the directors pursuant to Sub-section (3).

(6) A director who is receiving regular remuneration or facilities, other than meeting allowances, from any one listed company shall not be appointed to the post of managing director in another listed company, with entitlement to regular remuneration or facilities.

97. Meetings of board of directors: (1) Meetings of the board of directors of a private company shall be held as mentioned in the articles of association.

(2) Meetings of the board of directors of a public company shall be held at least six times in a year.

Provided, however, that the interval between any two meetings shall not exceed three months.

(3) The directors shall be present in personal meetings of the board of directors of a company. The presence of the proxy of a director in his/her stead shall not be held valid.

(4) No meeting of the board of directors shall be held unless it is attended by at least fifty one per cent of the total number of directors of the company.

Provided, however, that any director who is not entitled to take parting any matter to be discussed in a meeting of the board of directors under this Act shall not be counted for the purposes of this sub- section.

(5) If a meeting of the board of directors cannot be held because of the lack of presence of directors in the number mentioned in Sub-section (4), another meeting may be called by giving a notice of at least three days. Even if

such meeting is not attended by the directors in the number mentioned in Sub-section (4), the proceedings and decisions conducted and made by the attending directors shall be valid.

(6) The decision of a majority in a meeting of the board of directors shall be binding, and in the event of a tie, the Chairperson may exercise the casting vote, in addition to a vote cast by him/her as a director.

Provided, however, that any director who has any personal concern or interest in any matter to be discussed in a meeting of the board of directors shall not be entitled to take part in such discussion and vote on the matter.

(7) Minutes regarding the names of directors present in the meeting of board of directors, the subjects discussed and the decisions taken thereon shall be recorded in a separate book, and such minute book shall be signed by at least fifty one *per cent* of the total directors present in the meeting.

Provided, however, that, if any director puts forward any opinion opposed to or differing from the decision in the course of discussions on any subject in a meeting, he/she may mention the same in the minute book .

(8) Any decision shall not be deemed invalid merely for the reason that there is no signature of any member.

(9) Notwithstanding anything contained in Sub-section (3), (4), (5) and (6), except in the cases that are so expressly prohibited by them memorandum of association or articles of association, if all the members of the board of directors or a sub-committee of directors so consent in writing in regard to any act or resolution permitted to be done or adopted by the board of directors or such sub-committee, such act may be done even without holding a meeting by recording such consent in the minute book.

(10) The consent referred to in Sub-section (9) shall be deemed to be a decision of a meeting of board of directors.

98. Notice of meeting of board of directors: (1) Except as otherwise provided in the articles of association of a company, the company secretary or Chairperson

of the board or chief executive of the company shall call a meeting of the board of directors of the company.

(2) Notwithstanding anything contained in Sub-section (1) if at least twenty five per cent directors of the total number of directors make written requisition, setting out the subject to be discussed in the meeting, for calling the meeting of the board of directors, the Chairperson shall call the meeting of the board no later than seven days of the receipt of such requisition. If the meeting of the board of directors is not called within that period, such requisition making directors themselves may call the meeting of the board of directors.

(3) The matters about the notice of a meeting of the board of directors shall be as provided in the articles of association of the company. Failing such provision, a written notice of the meeting of board of directors and agenda thereof shall be sent to every directors at the address supplied by him/her to the company; and such notice may also be given through any electronic means of communication.

99. Responsibilities and duties of directors: (1) No director or of a company shall do any thing to derive personal benefit through the company or in the course of conducting business of the company.

(2) If any person has derived personal benefit in the course of business of the company in contravention of Sub-section (1), the company shall recover the amount involved in the matter from such director as if such amount were a loan.

(3) Any person appointed as a director of a public company shall, prior to assuming the duties of his/her office, take an oath of secrecy and honesty in a format as prescribed.

(4) Every director and officer of a company shall, in discharging their duties, act honestly and in good faith, having regard to the interest and benefit of the company, and exercise such care, caution, wisdom, diligence and efficiency as a reasonable and prudent person exercises.

(5) The company may recover damages for any loss or damage caused too the company from a director who does any act with ulterior motive, causing such loss or damage to the company, in contravention of Sub-section (4).

(6) It shall be the duty of every director to comply with this Act, memorandum of association, articles of association of the company and the consensus agreement.

100. Disclosure about securities: (1) In the event that the shares or debentures of a company are listed in a body operating the stock exchange, after the director has made disclosure to the company about the shares or debentures of such company pursuant to Section 94, the company shall promptly give information thereof to such body.

(2) Such body shall publish the information received pursuant to Sub-section (1) in such manner as it thinks fit.

101. Prohibition on loans to officers or shareholders: (1) No company shall make any loan or provide any financial assistance to its officer, substantial shareholders or officer, shareholder of a holding company or a close relative of such person nor shall it give any guarantee or provide security in respect of any loan borrowed by such officer or shareholder or close relative from any other person.

Provided, however, that this provision shall not apply to any loan or facility to be made or provided to any employee of a company in accordance with the rules of the company or to any loan made or guarantee given by any bank or financial institution in the ordinary course of business transaction, except as prohibited by the prevailing law.

(2) Any person mentioned in Sub-section (1) shall repay any loan, which was borrowed by him/her prior to the commencement of this Act, no later than 22 *Ashwin* 2065 (8 December 2008).

102. Prohibition on giving false statements by officers: If any officer, knowingly giving false statements in a general meeting of a company, about the actual

financial situation of the company, encourage to distribute higher dividend to the shareholders of the company than that can be distributed from the profits, thereby affecting the capital of the company, the officer giving such false statements shall be personally liable for such act.

103. Transaction with other person and jurisdiction of company: (1) No transaction done by a company with another person shall be void or invalid merely on the ground that such transaction is beyond jurisdiction based on any matter contained in the memorandum of association of the company.

(2) It shall be the duty of every director and officer to do such transaction within the ambit of jurisdiction specified in the memorandum of association of the company

(3) Except in the case mentioned in Sub-section (1), any act or transaction done by a director beyond the authority conferred to him/her may be rectified by the company by adopting a special resolution in its general meeting.

(4) No director, officer or other person of the company shall be deemed to have been released from any liability under this Act for any act done or action taken by him/her beyond jurisdiction merely on the ground that any act or transaction has been ratified by a special resolution pursuant to Sub-section(3).

104. Company to be bound: (1) Any act done or action taken by or document signed by at least one director authorized by a company or any person authorized to act for the company shall be valid and binding for the company.

(2) where any person does any transaction with a company in good faith, such transaction shall be binding for the company; and nothing contained in memorandum of association, articles of association of the company or in any resolution adopted by the general meeting or in any agreement concluded between the company and its shareholder shall be deemed to have made any limitation in or restriction on the authority of the director or the authorized person to do such transaction.

Provided, however, that if any officer does any act or transaction mentioned in Sub-section (1) or (2) in excess of his/her authority, such officer shall be personally liable for such act or transaction unless such authority is ratified by the general meeting pursuant to this Act; and the company may also recover from him/her the loss or damage, if any caused to the company from such act or transaction.

105. Restrictions on authority of directors: (1) The board of directors of a public company, or of a private company receiving loans from any bank or financial institution, shall not, except with a special resolution being adopted by the general meeting of shareholders, do or cause to be done the following act:

- (a) selling, donating, gifting, leasing or otherwise disposing of more than seventy per cent of one or more undertakings being operated by it;
- (b) borrowing moneys, where the moneys to be borrowed will exceed the aggregate of the paid up capital of the company and its free reserves, apart from any loans and faculties with a term of less than six months obtained by it from a bank or financial institution in the ordinary course of business transaction;
- (c) making a contribution, donation or gift in a sum exceeding fifty thousand rupees in one financial year or a sum exceeding one per cent of the average net profits of the company during the last three financial years, whichever is the lesser, except the contribution, donation, gift etc. made for the welfare of its employees or for the promotion of its business.

Provided, however, that:

- (i) Nothing contained in Clause (a) shall affect the title of a buyer who buys any property or undertaking of a company on payment of the prevailing market price

from a company which is solely engaged in the business of buying and selling of movable and immovable properties.

- (ii) The provision of Clause (b) shall not be applicable to the acceptance by a company carrying on banking or financial transaction or insurance business of deposits or insurance premium from the general public in the ordinary course of its business transaction.

(2) The general meeting may specify appropriate terms and conditions while giving approval for the purposes of Sub-section (1).

106. Validity of acts already done: If it is afterwards discovered that any provision under this Act has not been complied with in respect of the appointment of any director, acts already done by such director him/her before the discovery of such fact shall not be rendered invalid by that fact.

107. Registers of director and company secretary: (1) Every company shall maintain a separate register of director and of company secretary, if any.

(2) Every company shall record the name, surname, address, citizenship, profession, occupation of its director or secretary, and the date of appointment as director or secretary as well as the date of removal, if applicable, in the register maintained pursuant to Sub-section, (1), and shall send a notice of the alteration, if any, made in such detail within fifteen days.

Chapter 7

Accounts and Records of company

108. Accounts of company: (1) Every company shall duly maintain its accounts in the Nepali or the English language.

(2) The accounts to be maintained under Sub-section (1) shall be maintained according to the double entry system of accounting and in consonance with the accounting standards enforced by the competent body under the prevailing law and with such other terms and provisions required to

be observed pursuant to this Act, in such a manner as to clearly reflect the actual affairs of the Company.

(3) The books of account of a company shall not be kept at any place other than its registered office, except with the approval of the Office.

(4) The cash balance of a company, other than the amount specified by the board of directors, shall be deposited in a bank and transaction shall be done through the bank.

(5) Subject to the provisions contained in this Chapter, the directors or other officers shall have the final responsibility to maintain books of account and records of the company.

(6) Where there is a default in complying with the provisions made in this Act in respect of the preparation of books of account and annual financial statements of a company, the director or officer him/herself, during whose tenure the annual financial statements and other reports have been prepared, shall be responsible under this Act.

109. Annual financial statement and report of board of directors: (1) The following annual financial statements shall be prepared by the board of directors of a public company every year at least thirty days prior to the holding of its annual general meeting, and in the case of a private company, within six months of the expiry of its financial year:

- (a) Balance sheet as at the last date of the financial year.
- (b) Profit and loss account of the financial year.
- (c) Description of cash flow of the financial year.

(2) This annual financial statement to be prepared pursuant to Sub-section(1) shall give true and fair view of the state of affairs of the company as at the last day of the financial year concerned and also state the account of profit and loss and description of cash flow made in that financial year. Such financial statements shall be prepared in the format prescribed by the prevailing law.

(3) The annual financial statements as referred to in Sub-section (1) shall have to be approved by the board of directors and audited.

(4) The board of directors of every public company or every private company with the paid-up capital of ten million rupees or more or with an annual turnover of ten million rupees or more shall also prepare a separate report of board of directors during that period stating the following matters, in addition to the annual financial statements required to be prepared pursuant to Sub-section (1):

- (a) Review of the transactions of the previous year;
- (b) Impacts, if any, caused on the transactions of the company from national and international situation;
- (c) Achievements in the current year as at the date of report and opinions of the board of directors on matters to be done in the future;
- (d) Industrial or professional relations of the company;
- (e) Alterations in the board of directors and the reasons therefore;
- (f) Major things affecting the transactions;
- (g) If there are any remarks in the audit report, the comments of the board of directors on such remarks;
- (h) Amount recommended for payment by way of dividend;
- (i) In the event of forfeiture of shares, details regarding the number of forfeited shares, face value of such shares, total amount received by the company for such shares prior to the forfeiture thereof, proceeds of sale of such shares after the forfeiture thereof, and refund of amount, if any, made for such forfeited shares;

- (j) Progress of transactions of the company and of its subsidiary company in the previous financial year and review of the situation existing at the end of that financial year;
- (k) Major transactions completed by the company and its subsidiary company in the financial year and any material changes taken place in the transactions of the company during that period;
- (l) Disclosures made by the substantial shareholders of the company to the company in the previous financial year;
- (m) Details of shareholding taken by the directors and officers of the company in the previous financial year and , in the event of their involvement in share transaction of the company, details of information received by the company from them in that respect;
- (n) Details of disclosures made about the personal interest of any director and his/her close relative in any agreements related with the company during the previous financial year;
- (o) In the event that the company has bought its own shares (buy-back), the reasons for such buy-back ,number and face value of such shares, and amount paid by the company for such buy-back;
- (p) Whether there is an internal control system in place or not; and details of such system, if it is in place;
- (q) Details of total management expenses during the previous financial year;
- (r) Name-list of the members of audit committee, remuneration, allowances and facilities received by them,

details of the functions performed by that committee, and details of suggestions, if any, made by that committee;

- (s) Amount, if any, outstanding and payable to the company by any director, managing director, chief executive, substantial shareholder or his/her close relative or by any firm company, corporate body in which he/she is involved;
- (t) Amount of remuneration, allowances and faculties paid to the director, managing director, chief executive and officer;
- (u) Amount of dividends remaining unclaimed by the shareholders ;
- (v) Details of sale and purchase of properties pursuant to Section 141;
- (w) Details of transactions carried on between the associated companies pursuant to Section 175;
- (x) Any other matters required to be set out in the report of board of directors under this Act and the prevailing law;
- (y) Other necessary matters.

(5) While preparing the annual financial statements pursuant to Sub-section (1), such statement shall also contain, in the case of the year of incorporation of the company, the accounts from the date of its incorporation to the last day of that financial year, and thereafter, the accounts of the previous financial year.

(6) The annual financial statements prepared pursuant to this Section shall be kept open for inspection by any shareholder, if he/she so desires.

(7) The annual financial statements and the report of board of directors prepared pursuant to this Section shall be approved by the board of directors and signed by the Chairperson of the board of directors and at least one director.

(8) The accounts and annual financial statements prepared by a company pursuant to this Chapter shall be kept safely for at least five years after the date of expiry of the financial year concerned.

(9) The officers who prepare any false annual financial statements, reports of board of directors and other returns and reports required to be prepared pursuant to this Act and the directors who approve the same shall be liable to punishment under this Act.

Chapter 8

Audit

110. Company to appoint auditor: (1) Every company shall appoint an auditor under this Act to have its accounts audited.

(2) In cases where any company has a branch office outside Nepal, the auditor appointed pursuant to Sub-section (1) may also audit the accounts of that branch office except as otherwise provide in the prevailing law of the country where such branch office is situated.

111. Appointment of auditor: (1) The auditor of accompany shall be appointed, from amongst the auditors licensed to carry out audit under the prevailing law, by the general meting, subject to Chapter-18 ,in the case of a public company, and, in accordance with the provision as contained in the memorandum of association, articles of association or consensus agreement, any failing such provision, by the general meeting, in the case of a private company; and his/her name shall be forwarded to the Office within fifteen days from the date of such appointment.

Provided, however, that the board of directors may appoint the auditor prior to the holding of the first annual general meeting,

(2) The auditor appointed pursuant to Sub-section (1) shall hold office only until the next annual general meeting.

(3) No auditor or his/her partner or ex-partner or employee or ex-employee shall be appointed as auditor for more than three consecutive terms to perform the audit of a public company.

Provided, however, that this restriction shall not apply to any partner who ended partnership or any employee who left the service of such auditor three years before.

112. Disqualifications of auditor: (1) None of the following persons or the firms or companies in which such persons are partners shall be qualified for appointment as auditor and shall, despite appointment as auditor, continue to hold office:

- (a) A director, advisor appointed with entitlement to regular remuneration or cash benefit, a person or employee or worker involved in the management of the company or a partner of any of them or and employee of any of such partners or a close relative of a director or partner, out of them, or and employee of such relative;
- (b) A debtor who has borrowed moneys from the company in any manner, or a person who has failed to pay any dues payable to the company within the time limit and is in such arrears or close relative of such person;
- (c) A person who has been sentenced to punishment for an offense pertaining to audit and a period of Three years has not elapsed thereafter;
- (d) A person who has been declared insolvent;
- (e) A substantial shareholder of the company or a shareholder holding one percent or more of the paid up capital of the company or his/her close relative;
- (f) A person who has been sentenced to punishment for an offense of corruption, fraud or a criminal offense

involving moral turpitude and a period of five years has not elapsed thereafter;

- (g) A person referred to in Sub-section (3) of Section 111;
- (h) In the case of a public company , any person who works, whether full time or part time , for any governmental body or any body owned fully or partly by the Government of Nepal or any other company or a partner of such person or a person who is working as an employee of such partner or a person who is authorized to sign any documents or reports to be prepared by the management of the company;
- (i) A company or corporate body with limited liability;
- (j) A person having interest in any transaction with the company or his/her close relative or a director, officer or substantial shareholder of another company having any interest in any transaction with the company.

(2) The auditor shall, prior to his/her appointment ,give information in writing to the company that he/she is not disqualified pursuant to Sub-section(1).

(3) Where any auditor becomes disqualified to audit the accounts of a company or there arises a situation where he/she becomes disqualified for appointment or can no longer continue to act as an auditor of the company, he/she shall immediately stop performing audit which is required to be performed or is being performed by him/her and give information thereof to the company in writing.

(4) The audit performed by an auditor who has been appointed in contravention of this Section shall be invalid.

113. Power of Office to appoint auditor: Where the annual general meeting of a company fails to appoint an auditor for any reason or where the annual general meeting itself cannot be held or where the auditor appointed pursuant to this

Act ceases to continue his/her office for any reason, the Office may, at the request of the board of directors of the company, appoint another auditor.

114. Accounts and records to be furnished: The books of accounts and records of a company shall on his/her demand, at any time during office hours be furnished to the auditor for the purposes of audit; and the concerned director or employee shall also forthwith give oral explanations on such matter as may be asked by him/her, within a reasonable period of time.

115. Functions and duties of auditor: (1) The auditor shall, addressing the shareholders or the appointing authority, submit to the company his/her report, certifying the balance sheet, profit and loss account and cash flow statement based on the books of account, records and accounts audited by him/her.

(2) The audit report shall be prepared in accordance with the prevailing law or in consonance with the audit standards prescribed by the competent body; and such report shall state the matters to be set out under this Act, as per necessity.

(3) The audit report as referred to in Sub-section (2) shall also indicate the following matters, *inter alia*:

- (a) Whether such information and explanations have been made available as were required for the completion of audit;
- (b) Whether the books of account as required by this Act have been properly maintained by the company in a manner to reflect the real affairs of its business;
- (c) Whether the balance sheet, profit and loss account and cash flow statements received have been prepared in compliance with the accounting standards prescribed under the prevailing law and whether such statements are in agreement with the books of account maintained by the company;

- (d) Whether, in the opinion of the auditor based on the explanations and information made available in the course of auditing, the present balance sheet properly reflects the financial situation of the company, and the profit and loss account and cash flow statement for the year ended on the same date properly reflect the profit and loss, cash flow of the company, respectively;
- (e) Whether the board of directors or any representative or any employee has acted contrary to law or misappropriated any property of the company or caused any loss or damage to the company or not;
- (f) Whether any accounting fraud has been committed in the company
- (g) Suggestion, if any.

116. Audit report to bear auditor's signature: (1) An audit report prepared by the auditor appointed by any company this Act shall be signed and dated by the auditor him/herself.

(2) Whether any company has appointed any accounting institution licensed under the prevailing law to carry out audit, the member who has been authorized by a decision of the partners of such institution shall sign and date the audit report.

117. Information to be provided: The Company shall, subject to the provisions contained in this Act, send a copy of the report made by the auditor to the shareholders. Whether there is a provision of formal trade union in such company, the company shall, at the request in writing of such trade union, provide one copy of such report to that trade union.

118. Remuneration of auditor: The remuneration of an auditor shall be as prescribed by the appointing authority; and such remuneration shall be borne by the company.

119. Provision relating to removal of appointed auditor: (1) No auditor appointed pursuant to this Chapter shall be removed pending the completion of audit of accounts of any financial year for which he/she was appointed as the auditor.

(2) Notwithstanding anything contained in Sub-section (1) , if any auditor breaches the code of conduct of auditors or does any act against the interest of the company which has appointed him/her as the auditor or commits any act contrary to the prevailing law, such auditor may be removed through the same process whereby he/she was appointed as auditor, by giving prior information to the Nepal Chartered Accountants Institute, and with the approval of the regulatory authority, if any authorized by the prevailing law for the regulation of business of the company concerned , and failing such authority, with the approval of the Office.

(3) While removing an auditor pursuant to Sub-section (2), the auditor shall be provided with a reasonable opportunity to defend him/herself.

Chapter 9

Call for Explanation and Investigation

120. Power of Office to call for explanation: (1) Where any matter is unclear in the documents submitted by a company, and such matter has to be set out or any explanation is necessary in respect of any matter, the Office may call on the company to furnish explanation on such matter within such reasonable period of time as specified by it.

(2) The management of the company shall, within the specified period of time, send proper replies the specified period of time, sent proper replies to the matters with respect to which explanation has been called on pursuant to Sub-section(1).

(3) If, in the course of perusing explanation, the Office notices any irregularity in the business of a company, it may give necessary directive to the company to regularize, or cause to be regularized, it, and it shall be the duty of the company to obey such directive.

121. Power of Office to depute inspector: If the shareholders representing not less than ten percent of the paid up capital or not less than one –fourth of the total number of shareholders of the company or the concerning creditors make an application, accompanied by the supporting evidence and reasonable grounds, stating that the company has acted in contravention of this Act, the memorandum of association, articles of association, prospectus, consensus agreement or prevailing law, the Office may, as per necessity, depute one or more inspectors. Such inspector shall be an expert in any of the subjects viz. accounts, law, finance, management, commerce, industry or company administration or any business which a company carries on the applicant shall deposit with the Office such amount of estimated cost required for such investigation as specified by the Office.

(2) Notwithstanding anything contained in Sub-section (1), where the Office is of opinion that the following circumstance does exist, it may, as per necessity, even if no application is made pursuant to Sub-section (1), appoint an inspector in possession of the qualification referred to in Sub-section (1), to investigate the transactions or business of any company:

- (a) on the receipt of information that the business or transaction of the company is being carried on to defraud the shareholders or creditors of the company or otherwise for a fraudulent or illegal purpose or it is carrying out acts against public interest; or
- (b) any public company has not furnished such information about its transactions as is required to be furnished.

122. Functions, duties and powers of inspector: (1) The functions, duties and powers of the inspector deputed or appointed pursuant to Section 121 shall be as follows:

- (a) in course of investigation, to require those officers or shareholders or the company, where existing or former, whom he/she considers appropriate ,or any other persons

who are considered to have information relevant to the matter into which investigation is to be carried to appear before him/her and to record their statements; to obtain necessary information or other reasonable assistance;

- (b) to inspect the documents which are relevant for the purposes of investigation, or to seize or control any other things, or require any concerned person to produce such documents or things to him/her, or to take custody of such documents;
- (c) To investigate, or cause to be investigated, into whether the books of account of the company have been kept proper.

(2) Notwithstanding anything contained in the periling law, any matter or deposition expressed or made by any person before the inspector in the course of investigation pursuant to this Chapter shall be admissible as an evidence against that person.

123. Assistance to be rendered to inspector: (1) If any person makes a false deposition, fails to produce such statements or documents or other things as required to be submitted under Section 122 or fails to answer any question asked which is put to him/her by the inspector or fails to provide such information as asked by the inspector for the purposes of investigation, the inspector may file a compliant report in writing in the Court.

(2) On receipt of a report under Sub-section(1), the Court may, if, on necessary inquiry made into the matter under the prevailing law, any person is found guilty, impose such punishment on that person as it considers appropriate under Section 162.

124. Report to be submitted: (1) The inspector appointed pursuant to this Chapter shall, on conclusion of the investigation, submit a report, accompanied by his/her opinions, to the Office. The Office shall give a copy of such report to the applicant if any shareholder makes an application to get a copy of such

report, the office shall issue a copy thereof to him/her, by collecting the prescribed fees.

(2) If, from any report made by the inspector under Sub-section (1), It appears to the Office that any directors, managing directors, managers, employees or any other officers of the company have knowingly caused any loss or damage to the company or have defrauded, cheated the shareholders or creditors or committed any other illegal acts, the Office shall, notwithstanding anything contained in the prevailing laws, order the company to file a lawsuit on behalf of the company against them.

(3) Where the Office thinks that the company may suffer further loss or damage if its business is left further in the hand of directors, managing directors, managers, employees or any other officers who have committed any act as referred to in Sub-section (2), the Office may give necessary direction to the company to suspend such directors managing directors, managers, employees or officers and carry on its business through any other means.

(4) Notwithstanding anything contained in the prevailing law on evidence, any matter contained in and any fact expressed in a report submitted by an inspector pursuant to Sub-section(1) shall be admissible as an evidence.

125. Expenses of investigation: (1) The expenses incurred in an investigation carried out by the Office pursuant to this Chapter shall be borne by the concerned company.

Provided, however, that if, in the course of carrying out investigation, any director, managing director, manager or officer of a company appears to committed a malice, deception, fraud or cheating, such director, managing director, manager or officer shall pay the expenses of investigation no later than seven days of the completion of investigation.

(2) If the concerned director, managing director, manager or officer does not pay the expenses of investigation pursuant to the expenses of investigation pursuant to the proviso to Sub-section(1), the expenses shall be recovered as governmental dues.

(3) An inspector appointed pursuant to this Chapter may give suggestion in his/her report as to the payment of expenses.

Chapter 10

Voluntary Liquidation of Company

126. Liquidation of company able to pay its debts: (1) Except in case where a company has become insolvent in accordance with the prevailing law on insolvency, the shareholders of the company may liquidate the company either by adopting a special resolution in the general meeting or memorandum of association, articles of association or consensus agreement.

(2) A company may be liquidated under this Act in the following circumstance:

- (a) If the company is able to pay its debts or other liabilities in full;
- (b) If there exists no situation where an application for the review of insolvency of the company is pending under the prevailing law on insolvency or where the company would be in any manner subject to an insolvency proceeding under the prevailing law on insolvency;
- (c) If the directors of the company, have, after due inquiry, made a declaration in writing that the company is able to pay its debts and other liabilities in full and that the debts and liabilities to be paid on behalf of such company can be paid up or can be fully settled in any other process within one year from the date of the adoption of the resolution to liquidate the company;
- (d) If the written declaration made by the directors pursuant to Clause (c) was presented in the general meeting called to discuss the matter of liquidation of the company or such

declaration was made at the time of discussions on that matter in the general meeting.

(3) A copy of the special resolution adopted with respect to the liquidation of a company pursuant to this Section and a written declaration of directors shall be submitted to the Office in later than seven days after the date of adoption of the resolution.

127. Appointment of liquidator and auditor: (1) While adopting a resolution to liquidate a company pursuant to Section 126, the company shall appoint a liquidator.

(2) While appointing a liquidator pursuant to Sub-section (1), a practitioner licensed under the prevailing law on insolvency shall be appointed as liquidator to conduct the liquidation proceedings and fix remuneration receivable by such liquidator .

(3) The company shall give information of the appointment of a liquidator pursuant to Sub-section (2) to the Office no later than seven days after the date of such appointment.

(4) After a liquidator is appointed pursuant to Sub-section (2), the directors and officers of the company shall be relieved of their office and the liquidator shall exercise all such powers with respect to the operation and management of company as may be exercisable by the directors and officers of the company.

(5) The service of employees of a company shall, *ipso facto*, be terminated after the liquidator commences the operation and management of the company pursuant to Sub –section (4).

Provided, however, that the liquidator may retain or appoint necessary employees for his/her support and assistance.

(6) The liquidator appointed pursuant to this Section shall complete the liquidation proceedings of the company within the period of time specified at the time of his/her appointment.

Provided, however, that in the case where the liquidation proceedings cannot be complete for any reason within the specified period of time, a reasonable time limit may be extended by following the same procedure as followed in his/her appointment.

(7) While appointing a liquidator pursuant to Sub-section (1), an auditor shall also be appointed subject to provisions contained in this Act.

- 128. Application of prevailing law on insolvency:** While liquidating a company under this Chapter, the issue of whether any person is a creditor of a company in liquidation shall be determined in accordance with the prevailing law on insolvency.
- 129. Application to be made in the event of inability of company to pay liabilities:** If, after the liquidator has commenced proceedings of liquidation of accompany under this Chapter, he/she is satisfied that the company is insolvent and is not able to pay debts required to be paid or discharge liabilities required to be discharged in full he/she shall make an application to have a review of insolvency of the company in accordance with the prevailing law on insolvency.
- 130. Power of liquidator too take into custody and under control property of company:** After a liquidator has commenced his/her act, the liquidator shall take into his/her custody and under his/her control all property, accounts and all records and documents of the company.
- 131. Powers and duties of liquidator:** (1) The liquidator appointed under this Act shall, *mutatis mutandis*, exercise and perform all the powers and duties which may be exercised and performed by a liquidator under the prevailing law on insolvency.

(2) It shall be the duty of the liquidator to do the following acts, without prejudice to the generality of Sub-section (1):

- (a) To prepare and submit to the office, the statements and accounts of incomes and expenditures in the course of

liquidation in every six months after the appointment of the liquidator;

- (b) To inform the shareholders of the company about the progress on the liquidation proceedings in every six months after the appointment of the liquidator;
- (c) To obtain and recover all properties or amounts required to be obtained and recovered on behalf of the company and repay and discharge the debts and other liabilities of all the creditors of the company;
- (d) Following the completion of the act as referred to in Clause (c) , to call the general meeting of shareholders and present therein a proposed report and return on the distribution of the remaining properties of the company to the shareholders;
- (e) If the shareholders holding at least seventy five per cent of the paid up share capital consent to the return as referred to in Clause (d), to make payment of amounts to the shareholders accordingly;
- (f) At the completion of liquidation proceedings, to prepare a report on the properties recovered, payments made to the creditors and distributions made to the shareholders, on behalf of the company, and submit such report, certifying that the company has been liquated, accompanied by the auditor's report, to the Office.

132. Cancellation of registration of company: (1) Upon receipt by the Office of a report on the liquidation of a company pursuant to Clause (f) of Sub-section (2) of Section 131, the Office shall strike the name of the company off the company register and issue an order that the registration of the company has been canceled.

(2) After the issue of an order on the cancellation of registration of a company pursuant to Sub-section (1), the Office shall strike the name of such company off the company register and publish in a national daily newspaper a notice that such company has been dissolved.

[⊕](3) Notwithstanding contained anything in this section, liquidator appointed as per Insolvency Act, 2063, shall send to the office regarding the information completion of cancellation process of the cancel such company.

[⊕](4) Upon receiving the information pursuant to Sub-section (3) the office, shall keep record of cancellation such company and after such record the company shall deemed to be cancelled.

- 133. Power of creditor and shareholder to make complaint:** If any creditor or shareholder of a company thinks that there is any irregularity in respect of any act or action of the liquidator, while liquidating the company pursuant to this Chapter, such creditor or shareholder may make a complaint to the court against such act or action within fifteen days of the receipt of information thereof .
- 134. Action to be taken in cases of fraud or deception:** If a liquidator thinks that any director, employee or shareholder of a company has committed a fraud or deception against the company, the liquidator may take necessary legal action against such person in accordance with the prevailing law.
- 135. Right of secured creditors not to be affected:** The commencement of liquidation proceedings of a company pursuant to this Chapter shall not be deemed to prejudice in any manner the right of the secured creditors who have lent moneys against the security of any property of the company to enforce or otherwise deal with such secured property under the prevailing law.

[⊕] Inserted by the Some Nepal Act (Amendment) Act, 2064

Chapter 11

Cancellation of Registration of Company

136. Power of Office to cancel registration: (1) The Office may cancel the registration of a company in the following circumstance:

- (a) If the promoter of the company makes an application, showing a reason for the failure to commence the business of the company, and accompanied by the prescribed fees, for the cancellation of the registration of the company:
- (b) If the company is in default in submitting to the Office the returns as referred to in Section 80 or fails pay the fine as referred too in Section 81 for three consecutive financial years; or
- (c) If based on the proofs received in the course of administration of the company, the Office has a reasonable ground to believe that the company is not carrying on its business or the company is not in operation.

(2) If it is required to cancel the registration of any company pursuant to Sub-section (1), the Office shall, prior to the cancellation of registration, give a notice, accompanied by the reason for such registration, to the concerned company.

(3) While sending a notice to a company pursuant to Sub-section (2), the notice shall be sent to the company at its registered office or to any office or such company if the address of the registered office of such company is not registered with the Office or if the office of the company is not located at the address registered and to the memorandum of association of the company if even address of such officer is not available to the Office or is not known.

(4) A notice given pursuant to Sub-section (2) shall also be published in a national daily newspaper, as per necessity.

(5) If the company fails to make an application, specifying the reasons that the registration of the company should not be canceled, within two months from the date of receipt by the company of a notice pursuant to Sub-section (2) or, despite the making of such application, the reasons specified are not found reasonable, the registration of such company may be canceled.

(6) If the registration of a company is canceled pursuant to Sub-section (5), information thereof shall be given to the concerned directors and shall also be published in a national daily newspaper.

(7) If the registration of a company is canceled pursuant to Sub-section (5), if there exists any kind of liability of the company, the liability of the officer or shareholder of the company shall continue to exist; and nothing contained in this Section shall be deemed to bar the instituting of necessary legal action against them to have such liability fulfilled.

(8) The assets, rights, benefits or liabilities held in the name of the company at the time of cancellation of its registration pursuant to Sub-section (5) shall devolve on its shareholders in the proportion of their shareholding.

Provided, however, that the title and ownership of any property which has been held by the company as a trustee in favor of any other person shall to devolve on the shareholders.

(9) If any debt to be repaid by or any liability to be performed/discharged by the company of which registration has been canceled pursuant to this Section cannot be settled from the assets, rights, or benefits devolved on the shareholders pursuant to Sub-section (8), the shareholders, directors or officers who were involved in the management of such company and responsible for giving rise to the situation as referred to in Sub-section (1) shall personally bear such remaining loan or liability.

(10) A company of which registration is canceled pursuant to this Section shall not be allowed to carry on any business by the name of the same company.

(11) Following the cancellation of registration of any company pursuant to this Section, the Office shall return to the shareholders only such property, if any, remaining after deducting therefrom the expenses incurred in the cancellation of the registration of that company.

137. Restoration of registration of company of which registration was canceled:

(1) In the case of cancellation of the registration of a company pursuant to Sub-section (5) of Section 136, where the company or its shareholder or creditor makes a petition, setting out the reasons, to the Court to have the company restored, no later than five years after the date of publication of the notice of cancellation of registration of the company, the Court may, if the following circumstance, order to restore the company and restore its name in the company register:

- (a) If it appears that the registration of the company was canceled while such company was carrying on its business;
- (b) If the Court considers it to be just to restore the name of the company for the proper management of the assets and liabilities of such company.

(2) In the event of restoration of a company by virtue of an order of the Court pursuant to Sub-section (1), the company shall be considered to have been in existence from the date of its registration.

(3) In issuing an order pursuant to Sub-section (1), the court may issue such orders and make an order to make such arrangements as it may consider appropriate and necessary for restoring the company and all other persons into the *status quo ante* as if the registration of the company were not canceled.

(4) Where a company is restored pursuant to Sub-section (1) and any fine as referred to in Section 81 is to be paid, the company shall be restored and its name reentered in the company register only after such fine is paid to the Office.

(5) Where a company of which registration has been canceled pursuant to Section 136 is restored pursuant to this Section, such company shall have the following property reverted to it:

- (a) Any property received by its shareholders in such capacity pursuant to Sub-section (8) of Section 136 by virtue of the cancellation of registration of the company;
- (b) Where the property as referred to in Clause (a) has already been sold and disposed of, the proceeds of such sale and disposal.

Provided, however, that no property or amount already employed in the payment of debt or liability of a creditor shall be returned.

Chapter 12

Protection of Shareholders

138. Power to prevent directors and officers from doing unauthorized act: (1) If, on behalf of a company, any director or officer of the company does any act beyond his/her jurisdiction, any shareholder of such company may make a petition to the Court to prevent such act.

Provided, however, that no petition may be made under this Section in connection with any act or action done or taken or intended to be done or taken for the fulfillment of any liability created from any act or action already done or taken by the company.

(2) If, based on the report received by the Office pursuant to Section 124 in respect of any company, the Office thinks that the business of such company could be carried on or is being carried on in such a manner to be prejudicial to the rights and interests of any of or all shareholders of the company or any specific class or group of its shareholders or that any act done or intended to be done by the company or the failure of the company to do any act required to be done has resulted in or would result in a prejudice to the interests of such

shareholders, the Office may make a complaint/ petition to the Court against such company or its directors or officers.

(3) On receipt of a petition as referred to in Sub-section (1) or (2), the Court may inquire into the concerned company or its directors or officers and issue an appropriate order.

139. Remedy for act done against rights and interests of shareholders: (1) Based on the ground that the business of a company is carried on or is likely to be carried on in such a manner as to be prejudicial to the rights and interests of any shareholder of the company or that any act done or intended to be done on behalf of the company or the failure of the company to do any act required to be done has resulted in or would result in a prejudice to the rights and interests of any shareholder, such shareholder may make a complaint/ petition to the Court for an appropriate order.

(2) A shareholder who makes a petition pursuant to Sub-section (1) shall prove that the director, managing director, manager or any officer who manages and controls the company has done or intends to do any act with ulterior motive or made or intends to make undue discrimination, in contravention of the memorandum of association or articles of association or consensus agreement.

(3) On receipt of a petition as referred to in Sub-section (1), the court may if, upon inquiring into the concerned company, director or officer, the claim set forth in the petition appears to have reasonable, issue such order in the name of the company as it thinks appropriate for providing remedy thereto.

(4) In issuing an order pursuant to Sub-section (3), notwithstanding anything contained in the memorandum of association, articles of association or consensus agreement, the Court may, without prejudice to the generality of the said Sub-section, also issue the following order, namely:

- (a) Preventing the act and action done and taken against the rights and interests of any or all shareholders and carrying

of the business of the company in the future in a due manner;

- (b) Preventing any act and action being done and taken or requiring to do any act not done or intended not to be done by the company;
- (c) Requiring to institute, on behalf of the company a civil case against any one, in pursuance of a direction given by the court;
- (d) Requiring to buy back the shares of any shareholder in accordance with the procedures set forth in this Act, by reducing the capital of the company, and to return the amount of such shares;
- (e) In the event of any loss and damage being suffered any shareholder from a discrimination made against him/her, requiring the company or the person making such discrimination to pay compensation to the shareholder for the same;
- (f) Liquidating the company;
- (g) Requiring the company itself or any other shareholder of the company to purchase the shares held in the name of any shareholder;
- (h) Recovering the loss and damage caused to the company or its shareholders from the director or officer who has caused such loss and damage;
- (i) Where the company is to buy back its own shares, issuing an order to reduce the share capital of such company as if the share capital of such company were reduced by it by adopting a special resolution on reduction of share capital; where the memorandum and articles of association of the

company is to be amended by virtue of such order, issuing other appropriate order also to make necessary amendment thereto.

(5) Notwithstanding anything contained in Sub-section (1) or (2), the remedy available to a person who suffers any loss or damage because of the fact that a company or its director or any person responsible for the management or control of the company or its employee has failed to do any act required to be done or done any act required not to be done or otherwise done a discriminatory treatment shall not be deemed to be limited to this Section only; and such person may institute an action, whether individually or jointly, on behalf of him/herself or other shareholder, as well, to have any remedy available under other prevailing law.

(6) Where a collective remedy is demanded pursuant to Sub-section (5), the court may issue appropriate order with or without making necessary inquiry into some or all shareholders of that class.

(7) Notwithstanding anything contained elsewhere in this Act, where the court has issued an order in a manner that the company shall not make any amendment to its memorandum of association or articles of association or shall make an amendment to any specific matter for the protection of the rights and interests of any or all shareholders, in such a case, no amendment shall be made to the memorandum of association or articles of association without obtaining prior approval of the Court.

(8) If a company makes any amendment to its memorandum of association or articles of association by or pursuant to an order of the Court under Sub-section (7), such amendments shall be deemed to be an amendment adopted by a special resolution in the general meeting of the company.

(9) The Office shall make entry of the following orders issued by the court pursuant to this Section in the company register:

- (a) An order issued for the reduction of share capital of a company;

- (b) An order issued requiring any amendment to the memorandum of association or articles of association of the company.

(10) The provisions of this Section shall also apply to any person who has not yet been registered as a shareholder of a company but the shares have already been transmitted to his/her name through legal procedures as if such person were a shareholder of the company.

140. Right to shareholder to institute case on behalf of company: (1) A company may file in the Court a case against any director, office or shareholders or any person having control over the company pursuant to the consensus agreement to have any rights and interests of the company enforced.

(2) If the company concerned fails to institute a case under Sub-section (1), any share holder holding two and half percent or more of the shares in the paid-up capital of the company separately or jointly with two or more shareholders holding five percent shares may, on behalf of the company, file in the Court a case against any such director or officer or the person having control over the company or any other person.

(3) While filing a case by a shareholder pursuant to Sub-section (2), he/she shall state about what sort of effort he/she has made to persuade the company to institute the case by itself.

(4) Where a case is filed pursuant to Sub-section (2), the Court may decide whether it would be appropriate to keep on the case being run by the shareholder or to get the company to take over the case, and if it is found appropriate to get the company to take over the case, it may order the company to take over the case.

(5) Any case once filed pursuant to Sub-section (1) or (2) shall not be capable of being dismissed or being compromised except in cases where such compromise contains such terms ad conditions as specified by the Court.

(6) Where a case file pursuant to Sub-section (2) is adjudged sustaining the claim made by the claimant shareholder, the expenses incurred by him/her in the institution of such case and reasonable expenses made for the services of legal practitioner shall be reimbursed by the company. Where such claim is not sustained, such amount out of the expenses incurred by the defendant in defending such case as the Court thinks appropriate shall be reimbursed from the complainant shareholder.

141. Acquisition or sale of property: (1) A public company or its subsidiary company shall, if the purchase or sale of any property by it results in the following situation, give information thereof to the Office:

- (a) If the purchase of any property results in an increase in the value of its property or the value of consolidated property mentioned in the audited latest annual financial statement, by more than fifteen *per cent*;
- (b) If the income to be earned from the property sold or intended to be sold exceeds by more than fifteen per cent of the consolidated income before making payment for tax as mentioned in the audited latest books of account of the company.

(2) Any information to be given to the Office pursuant to Sub-section (1) shall set out the following matters; and where such matters are also applicable in the case of transaction of the company, such matters shall also be stated in the report of board of directors:

- (a) date of, and parties involved in, the transaction;
- (b) Details about the nature of property, and if that property includes, wholly or partly, any shares issued by any other company, the name of company issuing such shares and the nature of business to be carried on by that company;

- (c) Value of the transaction , and other terms and conditions of the transaction;
- (d) The ground pursued for the valuation of property, while buying or selling any property;
- (e) In the event of sale of any property, matter whether the proceeds of such sale is more or less than the book value of such property as shown in the records thereof.

Chapter 13

Holding and Subsidiary Companies

142. Control over subsidiary company: (1) A holding company may control its subsidiary company as follows:

- (a) By holding direct or indirect control over the formation of the board of directors;
- (b) By holding majority shares of the company.

(2) If any company becomes a subsidiary company of any other subsidiary company, the former company shall also be a subsidiary company of the holding company controlling the later company.

(3) Despite that the shares of a company are subscribed by any agent on behalf of the holding company or its subsidiary company or that the right to appoint directors of such company is exercised by any person nominated on behalf of the holding company or its subsidiary company, the conditions mentioned in Sub-section (1) shall be deemed to have been fulfilled.

Provided, however, that while determining a holding company and a subsidiary company, the shares possessed in the following circumstances shall not be recognized for this purpose:

- (a) In cases where any company is entitled to exercise any power on the basis of holding debentures or a trust deed on the issue of debentures or having subscribed shares;

- (b) In cases where a company lending credit has accepted the shares by way of security.

143. Documents to be enclosed: (1) Any holding company shall enclose the following documents of its subsidiary company in its balance sheet:

- (a) One copy of the annual accounts of the subsidiary company for the immediately expired financial year and the report of its board of directors during that period;
- (b) Auditor's report;
- (c) Details of the investment of the holding company in the subsidiary company at the end of the financial year;
- (d) In cases where the financial year of the holding company and that of the subsidiary company are different, the matter of change, if any, in any manner, of the right of the holding company over the subsidiary company during such different periods.

(2) The details as referred to in Clause (b) of Sub-section (1) shall also contain the net profits derived after deducting the loss suffered in the concerned financial year of the subsidiary company and the profit and loss as well which has not been mentioned in the accounts of the company after it has become the subsidiary company but which may be the concern of the shareholders of the holding company.

(3) In cases where the board of directors of the holding company fails to obtain the information as mentioned in Clause (b) of Sub-section (1), and Sub-section (2) due to any reason, the balance sheet of the holding company shall contain a written report thereof.

(4) The details as referred to in Clause (c) of Sub-section (1) shall also show the loans borrowed against the mortgage of any immovable property of the subsidiary company or the loans borrowed for any purpose other than discharging the existing liabilities.

- 144. Prohibition on investment in holding company:** No subsidiary company; shall purchase these shares or debentures of the holding company or make investment in the holding company in any other manner.

Chapter 14

Special Provisions relating to Private Companies

- 145. Consensus agreement:** (1) Except as otherwise provided in this Act, the following matters may be provided for in a consensus agreement of a private company:
- (a) Management, business and transaction of the company;
 - (b) Restriction, if any, on the transfer of shares;
 - (c) Power of one or more shareholders to liquidate the company owing to any specific or incidental event or voluntarily;
 - (d) Division or use of voting right;
 - (e) Terms of appointment of officers, employees, workers of the company,
 - (f) Matter as to who will be the directors, officers, or the persons bearing the ultimate responsibility or the chief executive, of the company;
 - (g) Mode of payment or distribution of dividends;
 - (h) Matter that there shall be no board of directors;
 - (i) Matter that, if there shall be no board of directors, who shall perform such functions as required to be performed by the board of directors under this Act;
 - (j) If the annual general meeting is not required to be held, provisions pertaining thereto;
 - (k) Types of shares and the provision of shares with different right, if any.

(2) The consensus agreement may be amended with the consent in writing of all parties to the agreement.

(3) The shareholders who, after the conclusion of a consensus agreement, have obtained the shares as follows shall be deemed to have consented to the agreement and become party thereof:

- (a) where the shares have been obtained by way of donation or gift;
- (b) Where the shares have been obtained in any other manner, with the knowledge of the existence of such agreement at the time of obtaining the shares.

146. Power of shareholder to inspect books of account: (1) Any shareholder of a private company or his/her proxy may inspect the following documents or records related with the transactions of the company during office hours:

- (a) Minute books of the general meeting and board of directors;
- (b) Annual financial statements;
- (c) Share register; and
- (d) Accounts of the company.

(2) The director or officer of a private company shall make adequate arrangement so that the shareholders could inspect the documents and records as referred to in Sub-section (1).

147. Return of transactions: (1) Any shareholder of a private company may demand the company for a return of transactions of the company for any financial year.

(2) The director, managing director or officer carrying on the transactions of the company shall provide a return accompanied by the certified annual financial statement no later than fifteen days of the demand of return pursuant to Sub-section (1).

148. Holding of annual general meeting not required: (1) Notwithstanding anything contained elsewhere in this Act, where a consensus agreement concluded between the shareholders of a private company has a provision that the annual general meeting of the company shall not be held, such private company shall not be required to hold its annual general meeting during the period of such agreement.

(2) Where a consensus agreement is concluded with a provision that the annual general meeting shall not be held pursuant to Sub-section (1), the company shall also make provisions on the procedure of making decision on such matters as required to be decided by the general meeting under this Act and on the authority of making such decision

149. Adoption of written resolution by private company: (1) Notwithstanding anything contained elsewhere in this Act, except as otherwise provided in the articles of association, any act which can be done by adopting a resolution including a special resolution in the general meeting of a private company or by adopting a resolution in the meeting of any particular class of shareholders can be done by a written resolution executed and signed by all shareholders representing at least seventy five percent shares, who are entitled to vote in holding discussion on such resolution on the same date on which such resolution is deemed to have been adopted.

(2) Where separate written resolutions have been recorded for any reason for the purposes of a Sub-section (1) and all such documents have the same contents, it shall not be necessary that all shareholders sign the same document;; and despite the fact that every shareholder has signed a separate document, such document shall be valid as if one written resolution were signed.

(3) Every shareholder signing a written resolution pursuant to this Section shall date the same; and the last date on which the resolution is signed by the shareholder shall be deemed to be the date on which the resolution has been adopted.

(4) Any document attached to any written resolution shall be deemed to have been presented in a meeting of shareholders signing the resolution.

(5) Any resolution accepted pursuant to this section shall be recognized for any purpose whatsoever as it were a decision adopted by a general meeting of a company or a meeting of any specific class of shareholders.

150. Deemed participation in general meeting: (1) Notwithstanding anything contained elsewhere in this Act, if, except, as otherwise provided in the articles of association of a private company, any shareholder of the company makes communication contact with all shareholders through any communication means and takes part in communication contact with other shareholders in such a manner that the other shareholders can hear or read whatever is spoken by every shareholder, every shareholder who so takes part in such communication contact shall be deemed to have taken part in the general meeting along with other shareholders.

(2) Notwithstanding anything contained elsewhere in this Section, where any shareholder makes a complaint/petition accompanied by the prescribed fees , to the Office no later than three months after the holding of a general meeting, mentioning that he/she has not taken part in the general meeting, the Office shall inquire into the concerned company; and, in holding such inquiry, where the company fails to prove that the complainant shareholder has taken part in such meeting, the decision made by that meeting shall not be valid.

(3) A meeting of shareholders conducted pursuant to Sub-section (1) shall be deemed to have been conducted in the place where the chairperson of the meeting is present.

(4) The provisions of Sub-section (1), (2) or (3) applicable to the general meeting of a company shall also apply, *mutatis mutandis*, to the meeting of directors or a sub-committee of directors of the company.

(5) After the completion of the general meeting pursuant to Sub-section (1), the chairperson of the meeting shall prepare minutes of the proceedings

and decisions conducted and taken in the meeting annually and authenticate the same.

151. **Special exemption companies carrying on prescribed transaction:** The Government of Nepal may, by a notification in the Nepal Gazette, exempt the private company having turnover within the prescribed limit from the provisions contained in Chapter-8.

Chapter 15

Provisions relating to Single Shareholder Companies

152. **Single shareholder company not required to call meeting of the board of director and general meeting:** Notwithstanding anything contained elsewhere in this Act, except as otherwise provided in the articles of association of a single shareholder company, all acts and decisions required to be done and made by the board of directors or general meeting of the company shall be as decided in writing by such shareholder; and no meeting of the board of directors or general meeting shall be required to be called.
153. **Transfer and transmission of shares of single shareholder company:** (1) In the event of death of the shareholder of a single shareholder company, his/her heir or the person acquiring the title to his/her shares shall acquire the right of shareholder, and such heir or person shall do all such acts inclusive of the transfer and transmissions of shares as the single shareholder can do under this Act. While making a decision to transfer and transmit shares, the person so acquiring the title shall make such decision in writing.

Provided, however, that if no heir to such shareholder is found, the Office shall appoint a liquidator and liquidate the company in accordance with the prevailing law.

(2) A person acquiring the title to shares pursuant to Sub-section (1) shall give information thereof, accompanied by the evidence of such title, to the Office no later than one month after the acquisition of such title.

(3) On receipt of the information as referred to in Sub-section (1), the Office shall record the information by collecting the prescribed fees and give information thereof to the person who acquires the title to shares.

(4) Where the number of person acquiring the title to shares pursuant to Sub-section (1) is more than one, they shall be considered to be the directors of company for the time being, except where the other heirs transfer the title to only one heir, and the memorandum of association and articles of association of the company shall be amended on that basis.

Provided, however, that where there arises a question of entitlement, such matter shall be governed by a judgment of the competent court.

Chapter 16

Provisions relating to Foreign Companies

154. Registration of foreign company: (1) No foreign company shall carry on any business or transaction in the Nepal without having a branch office of such company registered with the office of such company registered with the office pursuant to this Section or establishes such office without having a liaison office registered.

Provided, however, that making investment in shares in any company established pursuant to law, lending moneys to such company or participating in the operation or management of such company, with the approval of the competent body, shall not be deemed to be the carrying on of a business or transaction for the purposes of this Chapter .

Explanation: Where any foreign company carries on any transaction for a period of one month or more through an office established in Nepal or used therefor or appoints any person for regular contact or avails its service, such company shall be deemed to have done a transaction or established an office in Nepal for the purpose of this Chapter.

(2) A foreign company desiring to have its branch office registered pursuant to Sub-section (1) shall make to the Office an application,

accompanied by the permission obtained from the concerned body pursuant to the prevailing law, and the prescribed fees and in such format as prescribed, for the registration of such company.

(3) A foreign company desiring to have its liaison office registered pursuant to Sub-section (1) shall make to the Office an application, accompanied by the permission, if any, required to be obtained from the concerned body pursuant to the prevailing law for the registration of such office, and the prescribed fees and in such format as prescribed, for the registration of such company.

Explanation: where any foreign company is selected by any competent body pursuant to the prevailing law or enters into contract with any competent body, for any business in Nepal, the making of such selection entering into such contract shall, for the purposes of Sub-sections (1) and (2), be deemed to be the permission given by the concerned body.

(4) On receipt of an application made for the registration of a foreign company pursuant to Sub-section (2) or (3), the Office shall make necessary inquiry, register such company and give the registration certificate, as prescribed, no later than thirty days after the making of the application for carrying on a business or transaction in or establishing a liaison office in the Nepal.

(5) Where a foreign company cannot be registered pursuant to an application made under Sub-section (2) or (3), the Office shall give information thereof, setting out the reasons for the same, to the concerned applicant within thirty days.

(6) A foreign company registered pursuant to Sub-section (4) may open its branch office and carry on the concerned business or transaction in or open its liaison office in the Nepal.

Provided, however, that a foreign company registered as a liaison office shall not be entitled to do any income earning activity in Nepal.

(7) Where the name of a foreign company making application pursuant to Sub-section (2) or (3) or the objective to be implemented by such company is of such a nature that it cannot be registered pursuant to this Act, such foreign company shall not be registered in Nepal.

(8) A foreign company registered pursuant to Sub-section (4) shall be deemed to have been registered to carry on only the same type of business or transaction as is being carried on by it in the country where its registered office is situated or it has been incorporated.

(9) A foreign company registered pursuant to this Section shall put its name board in the place of its business in a manner conspicuous to all,, and the name of country where the company has been established and the registration number of the company registered in Nepal shall be clearly mentioned in such board and bills, receipts , invoices, etc or letter head to be used by the company.

(10) The office shall maintain a separate register for the registration of foreign companies registered pursuant to this Section and make arrangements for the inspection of such register by the general public and for getting a copy thereof by paying the prescribed fees.

(11) Notwithstanding anything contained elsewhere in this Act, a foreign company registered pursuant to this Section shall not issue shares or debentures within the Nepal.

(12) Notwithstanding anything contained elsewhere in this Act , a foreign company which is carrying on a business or transaction or which has established its liaison office in the Nepal without having been registered at the time of commencement of this Act shall get it registered with the Office pursuant to this Act no later than six months after the date of commencement of this Act.

155. Submission of documents by foreign companies: (1) A foreign company which makes an application for its registration or for the establishment of its liaison office pursuant to Section 154 shall submit to the Office the following details, along with the application:

- (a) Permission obtained by the foreign company from the competent authority to carry on its business or transaction in Nepal;
- (b) Copies of the charter, certificate of incorporation, memorandum of association, articles of association of the company, and Nepalese translation thereof;
- (c) Full name, address of the registered office and principal place of business of the company, date of incorporation of the company, description of the paid up capital and major objectives of such company;
- (d) Names, addresses of directors, manage, company secretaries or main officers of the company and description of their citizenship;
- (e) Name and address of the person residing or staying in the Nepal ,who is authorized by the company to receive, on its behalf, any summons, notice etc. issued in the name of the company;
- (f) Full address of the principal place where the company carries on its transaction or business in Nepal and of the office of the company situated in that place;
- (g) Where the company is to carry on any transaction or business in the State of Nepal, details of the proposed investment and transaction;
- (h) Where the company is to commence its transaction in Nepal, the proposed date thereof;
- (i) A declaration made by a director of the company or his/her representative, on behalf of the company, that the matters contained in the returns submitted by the company are true and correct;

(j) Power of attorney as referred to in Section 157.

(2) Where any amendment or alteration is made to or in the contents of any document submitted by any foreign company pursuant to Sub-section (1), a notice, accompanied by the details of such amendment or alteration, shall be given to the Office no later than thirty five days.

(3) While submitting any such documents issued outside Nepal or copies thereof as required to be submitted pursuant to Sub-section (1), they have to be certified pursuant to the law of the country of registration of the foreign company.

156. Books of account, audit and annual report of foreign company: (1) Every foreign company registered pursuant to Section 154 shall prepare an annual financial statement, along with the balance sheet and profit and loss account, in such a manner as to reflect the real situation of its transaction in Nepal, get it audited and submit the same to the Office no later than six months after the expiration of a financial year as if such company were a company incorporated under this Act.

(2) Every foreign company shall submit to the Office a copy of the annual financial statement, audit report and report of board of directors prepared for every financial year pursuant to the law of the country where its registered office is situated no later than three months after such statement and reports have been finally prepared.

(3) The annual financial statement to be prepared by a foreign company pursuant to Sub-section (1) shall include the following details:

- (a) Statements prepared in a manner to show classifying the particulars of the fixed, running and other properties held in the name of the foreign company within Nepal;
- (b) clear details of cash held in the name of the foreign company with a bank and financial institution situated in Nepal;

- (c) Clear details of cash held in the name of the foreign company with a bank and financial institution situated in Nepal;
- (d) Total amount of loans and liabilities, if any, due and payable by the foreign company to any person who is a resident of Nepal or a Nepalese company registered under this Act.

(4) Where any report and statement required to be submitted to the Office pursuant to Sub-section (2), and any document required to be attached therewith, are in a language other than the Nepali or English language, a copy of authentic translation of such document into the Nepali or English language shall also be attached therewith.

(5) A foreign company which has got its liaison office registered in Nepal pursuant to Section 154 shall get certified by an auditor the statements of salary, allowance and amounts paid to the employees, consultants or liaison persons serving in such office, statements of deduction of tax from such payment pursuant to the prevailing law, payment of rental and expenses for the operation of such office and statements of deduction of tax from such payment pursuant to the prevailing law, and submit the same to the Office no later than three months after the expiration of a financial year.

157. Power of attorney: (1) A foreign company to be registered pursuant to Section 154 shall submit office copy of a power of attorney executed in the specified format in accordance with the legal requirements of the country where the company has been incorporated or its registered office is situated, hereby appointing a person residing in Nepal as its authorized representative for the purposes of the service of any summons or notice or authorizing such person to receive any other lawful notices on a lawsuit or legal action instituted on behalf or legal against the company .

(2) A power of attorney executed pursuant to Sub-section (1) shall state, *inter alia* that where any summons or notice on a lawsuit instituted on behalf

of or against the company or other legal notice is delivered to the authorized representative, it shall be binding on the company for any purpose whatsoever.

158. Cancellation of registration and liquidation of a foreign company: (1)

Where a foreign company registered pursuant to Section 54 wishes to close down the transaction which it is carrying on in Nepal and get its registration canceled or where the competent authority, acting in accordance with the prevailing law, prohibits such company from carrying on the transaction or business within Nepal, such company shall make an application, accompanied by the prescribed fees, to the Office for the cancellation of its registration.

(2) A foreign company which makes an application pursuant to Sub-section (1) shall also submit, along with the application, an evidence and proof confirming that there is no liability due and payable by such company to any person, organization or governmental or non-governmental body in Nepal.

(3) In order to inquire whether the evidence and proof as referred to in Sub-section (2) are true or not, the Office shall publish at least twice in a national daily newspaper a notice inviting a claim, accompanied by evidence, on any liability, if any due and payable by the company to any one, within a period of twenty one days.

(4) Where any person makes a claim in pursuance of the notice published pursuant to Sub-section (3), the concerned company shall submit to the Office evidence or proof showing the settlement of such claim. Where the claim made against such company pursuant to Sub-section (1) cannot be settled from the assets of such company situated in Nepal, such company shall settle the same from its assets situated outside Nepal.

(5) Where no claim is made by any one within the time limit as referred to in Sub-section (3) or a proof is submitted showing that the claim made has been settled pursuant to Sub-section (4), the Office shall strike the name of such company off the foreign company register and give information thereof to the concerned company.

(6) Where an insolvency process is initiated in respect of a foreign company, which has been registered in Nepal pursuant to this Chapter, in accordance with the law of any country out of the countries where such company has been carrying on its transaction, the representative authorized by such foreign company pursuant to Section 157 shall promptly give a notice in writing thereof to the Office, and he/she shall also publish such notice in a national daily newspaper to be published from Nepal for the information of the general public.

Provided, however, that where an order for the cancellation of registration of such company has already been issued, such foreign company shall close its transaction or business in Nepal.

(7) Where any foreign company closes its transaction or business pursuant to the proviso to Sub-section (6), the prevailing law on insolvency shall govern the transaction or business carried on by such company in the State of Nepal.

Chapter- 17

Proceeding of Lawsuits and Punishments

159. Complaints and proceedings relating to cases under this Act: (1) In respect of any matter under this Act, a case may be filed and proceedings taken only with a complaint made by the Office or the director, officer, shareholder or member or creditor of a company or any other concerned person.

(2) Except in cases where jurisdiction is expressly given to the Office on any matter under this Act, the Court shall have power to hear and settle the cases on offenses punishable under this Act, the matters on which a complaint or application can be made to the Court as mentioned in various Sections of this Act and matters of compensation for amounts in controversy.

(3) In hearing and settling cases under this Act, the Court shall follow the procedures as referred to in the Summary Procedure Act, 2028 (1972).

(4) An appeal against any decision or order made or issued by the Office of Court under Sub-section (2) may be made to the Court as specified by the Government of Nepal with the consent of the Supreme Court, within thirty-five days.

(5) Notwithstanding anything contained in Sub-section(2), pending the specification of the Court by the Government of Nepal by a notification in the Nepal Gazette for hearing cases, suits and taking other actions pursuant to this Act, the Company Board formed pursuant to Section 1691 shall assume the jurisdiction of the concerned Court.

160. Punishment with fine not exceeding fifty thousand rupees or with imprisonment for a term not exceeding two years or with both:

The following person who commits the following offense shall be punished with a fine from twenty thousand rupees to fifty thousand rupees or with imprisonment for a term not exceeding two years or with both punishments:

- (a) Where any director or officer of a company has caused any loss or damage to the company or any person by mentioning any false matter in any document of the Company, with *mala fide* intention or malicious recklessness, such director or employee;
- (b) Where any director or officer of a company fails to maintain, or cause to be maintained, hides or conceals or damage such books of account or accounts as required to be maintained pursuant to this Act, such person;
- (c) Where the auditor of a company states a false matter in his/her report in the course of carrying out his/her duty or omits necessary comments while making audit, with *mala fide* intention or malicious recklessness, such auditor;
- (d) Where, a liquidator does not convene the meeting of creditors, or makes payment of loans or liabilities contrary to the order of priority or fails to maintain such books of account and accounts as required to be maintained under this Act or fails to take over such books of accounts and documents as required to be taken over, or maintains false accounts,

or fails to submit any report required to be submitted or fails to hand over cash, goods in-kind or books to be handed over by him/her on the termination of his/her assignment, with ulterior motive, recklessness or *mala fide* intention, such liquidator;

- (e) Where any director or officer or employee fails to hand over the documents, accounts, cash goods in –kind in this charge on the termination of his/her office or on receipt of a order to liquidate the company, to the successor or where the successor fails to take over them pursuant to this Act, such director, officer and employee who do not hand over or take over them;
- (f) Any director or officer who issues the prospectus of a company prior to its being registered with the Office who gives false details in the prospectus;
- (g) Where any act is done beyond the jurisdiction of the board of directors or beyond the scope of work of the company, any director or officer who does or orders to do such act;
- (h) Any shareholder who does not provide any returns pursuant to this Act or gives false returns;
- (i) Any director or officer or employee who misappropriates or embezzles cash or goods in-kind of the company or uses the cash or goods in-kind of the company for his/her personal use without the approval of the board of directors or the general meeting or does not settle advances according to the rules of the company or does not abide by any order issued by the Office or fails to submit any returns of the company;
- (j) Where any director or officer who has the duty to give any statements or information to the company, Office, Court or other body pursuant to this Act fails to give such statements of information, such director or officer;

- (k) An auditor who knowingly carries out auditing of the concerned company even after that he/she is not qualified to carry out auditing of any company;
- (l) An director or officer who exercises the powers not conferred to him/her or acts beyond the authority conferred to him/her;
- (m) An director or officer who maintains account in contravention of this Act;
- (n) Any director of officer who fails to provide such extracts of financial statement, annual financial statement or report as required to be provided to the shareholders pursuant to this Act;
- (o) Any director or substantial shareholder or company who receive or give any loan facility or remuneration from the company in a manner to be contrary to the provisions contained in this Act;
- (p) An company, officer, employee or any other person who, in seeking approval of the Court to reduce the share capital of the company, lies or hides the name of any creditor or gives false statements as to the loans borrowed by the company;
- (q) An private company which sells shares or debentures in contravention of this Act, directors and shareholders of such company;
- (r) An foreign company which carries on business or transaction in Nepal in contravention of this Act, directors, employees or representatives of such company;
- (s) A debenture trustee who acts contrary to the interest of the holders of debenture, directors or officers of such trustee;
- (t) A person who acts contrary to Sub-section (7) of Section 26;
- (u) An director or officer who fails to do any act required to be done pursuant to Section 60;

- (v) An person who carries on transaction by using the word “company” without getting a company registered pursuant to this Act;
- (w) An company, director or officer who fails to provide the information or notice as referred to in Section 141 or Section 175;
- (x) An shareholder of a company who does not provide such information as demanded pursuant to Section 47 or the company, director and officer who does not submit to the Office the information received from the shareholder pursuant to that Section;
- (y) An director or officer who acts contrary to Section 105;
- (z) The managing director, director or officer of a company who fails to provide the address of registered office of the company despite the issuance of written order by the Office at various times or giving of such notice through communication media, where such issuance was not possible;
- (z1) A company, director, substantial shareholder and officer who acts contrary to Section 50.

161. Punishment with fine not exceeding fifty thousand rupees: The following person who commits the following offense shall be punished with a fine from ten thousand rupees to fifty thousand rupees:

- (a) Where any shares are allotted in contravention of the provisions of this Act, the officer or person who makes such allotment;
- (b) Where a company purchases, out of the company’s capital in stock, its own shares or the shares of its holding company contrary to this Act or makes investment in contravention this Act, every director of that company;
- (c) In the event of failure to show or provide the books if account to the auditor as and when so required, the officer or person who has the duty to do so or provide the same;
- (d) An auditor who does not present a report as specified in the Act;

- (e) An director, manager and officer who does not make arrangements as referred to in Sub-section(3) of Section; 172;
- (f) An director and officer who violates the provisions of Section 146 or 147 or who does not maintain such records books or returns as required to be maintained pursuant to this Act;
- (g) An company, director, auditor, officer and employee who violate the provision contained in Chapter-18 or who fail to fulfill the duty and obligations specified in that Chapter;
- (h) In the event of failure to call the general meeting or a meeting of the board of directors required to be called pursuant to this Act or failure to send a notice of the general meeting or a meeting of the board of directors or failure to prepare the documents to be made available to the shareholders before the holding or the general meeting or failure to present in the general meeting such documents as required to be presented, the director, officer or person who has the duty to maintain or do such act or to call the meeting or to send such notice;
- (i) An officer who sets down any false deed or content of document stating that any matter which was neither done or happened to have been done or happened and *vice versa* in the minutes as referred to in Sub-section(1) of Section 75 and Sub-section (7) of Section 97 or such other return or report as required to be prepared an submitted to the company or Officer in such notice or information as required to be provided pursuant to this Act;
- (j) In the event that an declaration made by the directors pursuant to Sub-section(2) of Section 136 is held to be false, the director who makes such false statement;
- (k) An person who does false or wrong translation of any deed or document required to be submitted by a foreign company to the Office pursuant to this Act or any person who certifies the same.

- 162. Punishment with fine not exceeding twenty thousand rupees:** Except in matters contained in Sections 160 and 161, the Court may impose a fine of five thousand rupees to twenty thousand rupees on any company or every concerned director, managing director, manger, company secretary or employee of the company who fails to perform any act which he/she is required to perform under this Act or commits any act prohibited by this Act, or fails to perform his/her duty, or performs even any permissible act upon the expiry of the time-limit or without following the procedures, or fails to give such information to the Office as required to be given, or fails to submit such returns to the Office as required to be submitted.
- 163. Realization of amount of loss:** If a director, officer of an company or a person causes any loss or damage to the company or shareholder or creditor or any other person by committing an offense punishable under this Act or by violating any provision contains in this Act or the memorandum of association or articles of association or consensus agreement, the aggrieved company, shareholder, creditor or any person shall be entitled to have realized the amount of such loss or damage. He /She shall personally bear the amount of such loss or damage.

Chapter 18

Audit Committee

- 164. Audit Committee:** (1) A listed capital with paid up capital of thirty million rupees or more or a company which is fully or partly owned by the Government of Nepal shall form an audit committee under the Chairpersonship of a director who is not involved in the day-to –day operations of the company and consisting of a least three members .
- (2) A person who is a close relative of the chief executive of a company shall not be eligible to be a member of the audit committee formed pursuant to Sub-section (1).
- (3) At least one member of the audit committee shall be an experienced person having obtained professional certificate on accounting or a person

having gained experience in accounting and financial field after having obtained at least bachelor's degree in accounts, commerce, management, finance or economics.

(4) The report of board of directors required to be prepared by a company shall set out a short description of the activities of the audit committee, working policies adopted by the board of directors to implement the suggestions, if any, given by the audit committee, the allowances or facilities, if any, received by the members or the audit committee and the names of the members of audit committee.

(5) The audit committee may, for inquiring into any matter, notify the managing director of the company, chief executive or the company or other director, auditor, internal auditor and accounts chief involved in the day-to-day operations of the company to attend its meeting; and it shall be their duty to be present in the meeting of that committee if they are so notified.

(6) The board of directors shall implement the suggestions given by the audit committee in respect of the accounts and financial management the company; and where any suggestion cannot be implemented, the board of directors shall also mention the reasons for the same in its report.

(7) A company shall arrange for such means and resources as may be adequate for the fulfillment of responsibilities of the audit committee; and the audit committee may fix its internal rules of procedures on its own.

(8) The chairperson of the audit committee shall be present in the annual general meeting of the company.

(9) The audit committee shall meet as *per* necessity.

165. Functions, duties and powers of audit committee: The functions, duties and powers of the audit committee formed pursuant to Sub-section (1) of Section 164 shall be as follows:

(a) To review the accounts and financial statements of the company and ascertain the truth of the facts mentioned in such statements;

- (b) To review the internal financial control system and the risk management system of the company;
- (c) To supervise and review the internal auditing activity of the company;
- (d) To recommend the names of potential auditors for the appointment of the auditor of the company, fix the remuneration and terms and conditions of appointment of the auditor and present the same in the general meeting for the ratification thereof;
- (e) To review and supervise as to whether the auditor of the company has observed such conduct, standards and directives determined by the competent body pursuant to the prevailing law as required to be observed in the course of doing auditing work;
- (f) Based on the conduct, standard and directives determined by the competent body pursuant to the prevailing law, to formulate the policies required to be observed by the company in respect of the appointment and selection of the auditor;
- (g) To prepare the accounts related policy of the company and enforce, or cause to be enforced, the same;
- (h) Where any regulator body has provided for the long term audit report to be set out in the audit report of the company, to comply with the terms required to prepare such report;
- (i) To perform such other terms as prescribed by the board of directors in respect of the accounts, financial management and audit of the company.

Chapter- 19

Provisions relating to Companies Not Distributing Profits

- 166. Establishment of company not distributing profits:** (1) Notwithstanding anything contained elsewhere in this Act, any company may be incorporated to develop and promote any profession or occupation or to protect the collective rights and interests of the persons engaged in any specific profession or occupation or to carry on any enterprise for the attainment of any scientific,

academic, social, benevolent or public utility or welfare objective on the condition of not distributing dividends.

(2) Any person or trustee of a public trust registered pursuant to the prevailing law or any other corporate body incorporated pursuant to the prevailing law who wishes to register a company for the attainment or the objective mentioned in Sub-section(1) may make an application to the Office pursuant to Section 4.

(3) The number of promoters promoting a company pursuant to sub-section (1) shall be at least five; and after the incorporation such company, it may have any number of its members, with a minimum of five members.

(4) The membership of a company incorporated pursuant to Sub-section (1) shall not be transferable in any manner. The membership of any person or body shall *ipso facto* be terminated in the event of death, cancellation of registration or dissolution of such member or amalgamation of such member with another body or company.

(5) Except with the prior approval of the Office, a company incorporated pursuant to Sub-section (1) shall not add words such "company", "limited" or "private limited" at the end of its name.

(6) A company registered pursuant to Sub-section (1) shall obtain approval of the Office to expand its branch.

167. Special provisions relating to company not distributing profits: (1) Notwithstanding anything contained in this Act or the prevailing law, the following matters of a company incorporated pursuant to Section 166 shall be as follows:

(a) There shall not be required share capital to incorporate a company not distributing profits.

Provided, however, that the company may receive membership fees from its members and receive any

donation, gift pursuant to law for the accomplishment of its objectives.

- (b) No member of the company shall be liable for the debts and liabilities of the company except in the case where any member accepts such liability in writing the liability of the company, with specification of the limit of such liability; his/her liability shall be limited to the extent of that limit.
- (c) All the provisions of this Act as applicable to the listed company, other than those provisions which may be applicable only to the company with share capital, shall also apply to the company, its director, officer, auditor and employee.
- (d) The company shall not distribute dividend, bonus or any other amount, from the profits earned by it, to its members or employees; and the profits earned by the company shall be used to increase the capital of the company or for the attainment of its objectives.
- (e) The company shall obtain prior approval of the Office to change objectives.
- (f) Any company not distributing profits shall not be merged with any company distributing profits.
- (g) The members of a company incorporated under this Chapter shall elect the directors from amongst themselves in such number as fixed in the articles of association, on the basis of one member one vote.
- (h) The meeting allowance, salary, facility receivable by the officers or a company incorporated under this Chapter and the incorporation and operational expenses of the company shall not exceed the amount as specified by the Office; and

in so specifying expenses, the Office shall have regard to the capital situation and profits of such company.

- (i) In the event of liquidation of or cancellation of registration of a company incorporated under this Chapter, the assets of the company, if any, remaining after the settlement of the debts and liabilities of the company shall be dealt with as *per* the provision, if any, contained in its articles of association, and failing such provision, such assets shall devolve on the Government of Nepal.

Provided, however, that such assets shall, in no way, devolve on any body or company where a promoter or member of such company or his/her close relative or close relative of such relative is a promoter or member.

- (2) In the event of violation of any provision contained in Sub-section (1), the Office may cancel the registration of the company committing such violation.

Provided, however, that the company shall be provided with an opportunity to defend itself, prior to such cancellation of registration.

- (3) A person who is not satisfied with a decision on cancellation of registration made by the Office pursuant to Sub-section (2) may file a complaint in the Court within thirty five days after the receipt of information of such decision.

- (4) While canceling the registration pursuant to Sub-section (2), the Office shall appoint a liquidator and an auditor to complete the liquidation proceedings of such company, specifying the period for completion of such liquidation proceedings.

- (5) The liquidator and auditor appointed pursuant to Sub-section (4) shall discharge their functions in accordance with the provisions contained in this Act and the prevailing law.

Chapter- 20

Interim Provisions relating to Company Advisory Board and Company Board

168. Formation of Company Advisory Board: (1) The Government of Nepal shall, by a notification published in the Nepal Gazette, form a Company Advisory Board comprising a maximum of nine members consisting of one person from each of the fields of law, accounting profession, tax administration, commerce or trade administration, from amongst those who have done at least master's degree in the respective fields and gained expertise after having served for at least seven years in such fields in the government and private sectors, as well as a representative of the Federation of Nepalese Chamber of Commerce and Industries, so as to study the practical problems coming across in the field of implementation of this Act and prevailing law relating to company administration and give advice, as required, to the Government of Nepal on timely reforms to be made in the prevailing companies law and reforms in the company administration. The Registrar shall be the member secretary of the Company Advisory Board.

(2) While forming the Company Advisory Board pursuant to sub – section (1), the notification shall designate any one of the members of the Board also to act as its chairperson.

(3) The Company Advisory Board shall submit to the concerned Ministry of the Government of Nepal, an annual report on the activities carried out by it pursuant to Sub-section (1).

(4) The concerned Ministry shall publish the report submitted pursuant to Sub-section (3) and make arrangement so that the general public can obtain a copy of such report at a reasonable price.

169. Provisions relating to Company Board: (1) Pending the designation of a court by the Government of Nepal pursuant to the provisions contained in this Act, the Government of Nepal shall, by a notification published in the Nepal Gazette, form a three–member Company Board, consisting the Chairperson and member, as follows:

- (a) A person who is a District Judge or who has already been a District Judge or who is qualified for appointment as District Judge, with each such person, having done bachelor degree in law and gained experience in commercial law
-Chairperson
- (b) A person who, after being registered as an advocate pursuant to the prevailing law, has done legal practice in the field of commercial law for a least ten years or who has served in the post of Gazetted Class Two of Nepal Judicial Service for at least four years
-Member
- (c) A person who has done bachelor degree in management, commerce or accounting and worked in the field of company management, tax administration or accounting for at least ten years or an accounting professional who has obtained a professional certificate in accounting and gained at least five years of experience in accounting profession
-Member

(2) Notwithstanding anything contained in Clauses (a) , (b), (c), or (d) of Sub-section (1), the Government of Nepal may, by a notification published in the Nepal Gazette , designate any member, out of the members of the Company Advisory Board formed pursuant to Section 168, who has the qualification as mentioned in the said Clauses, also to act as the Chairperson or a member of the Company Board to be formed pursuant to this Section.

(3) The Board formed pursuant to Sub-section (1) or (2) shall exercise the jurisdiction conferred to the Court pursuant to this Act.

(4) The company Board formed pursuant to Sub-section (1) or (2) shall, while hearing and settling the cases pursuant to Sub-section (3), exercise its jurisdiction as follows:

- (a) Three members shall jointly exercise their jurisdiction.

Provided, however, that, where the Chairperson and another one member are present, the case may be heard and settled, and where other two members except the Chairperson are present, the case may be heard.

- (b) In the event of the presence of all the three members, the unanimous opinion of all the three members or the majority opinion of two members shall be deemed to be the decision of the Company Board.

- (c) In the event of the presence of two members only, where the two members have the same opinion, that opinion shall be the decision of the Company Board.

- (d) In the event of the presence of two members, where they lack unanimity in opinion, the opinion of the Chairperson, where the Chairperson as well is present, and where the other members except the Chairperson are present, the opinion of the senior member shall prevail in the matters of proceedings; and in the case of judgment or final order, it shall be submitted to the member who was absent earlier on the opinion supported by him/her shall be deemed to be the decision of the Company Board.

- (e) Where all the three members are present and each has a different opinion or where majority cannot be established even after making submission to the member who was absent earlier pursuant to Clause (d), the opinion of the Chairperson shall prevail in the case of proceedings, and

in the case of the judgment or final order, a reference shall be made to the Court hearing appeal.

(5) The Company Board may, considering the workload of cases, locate itself in any other place in Nepal for any specific period and hear and settle the cases.

(6) The Company Board shall follow the procedures referred to in the Summary Procedure Act, 2028 (1972) while hearing and settling the cases.

(7) A party who is not satisfied with a decision made by the Company Board on any case pursuant to this Section may make an appeal to the concerned Appellate Court within thirty five days after the date of the receipt of information of such decision.

(8) The remuneration, facilities and other terms and conditions of service of the Chairperson and member appointed or designated pursuant to this Section shall be as prescribed.

Provided, however, that the terms and conditions of service shall not be prescribed in manner to reduce the remuneration and facilities once already provided.

(9) Notwithstanding anything contained in Sub-section (1), the company board formed pursuant to the Companies Act, 2053 (1996) an existing at the time of the commencement of this Act shall continue to exist pending the formation of the Company Board as referred to in this Act.

(10) The cases, and petitions related thereto, filed in and under consideration of or yet to be decided by the company board as referred to in Sub-section (9) at the time of commencement of this Act shall , after the commencement of this Act, be transferred to the Company Board as referred to in this Section; and such cases shall be heard and settled by such Board.

170. Provisions relating to secretariat and employee of Company Advisory Board and Company Board: (1) The secretariat of the Company Advisory

Board to be formed pursuant to Section 168 shall be situated in the Company Register's Office.

(2) The secretariat of the Company Board to be formed pursuant to Section 169 shall be situated in the Ministry of Industries.

(3) The secretariat of the Company Board shall have such number of employees as specified by the Government of Nepal.

171. Dissolution of Company Board: (1) The Company Board formed pursuant to Section 169 shall *ipso facto* be dissolved on the date on which the Government of Nepal designates the Court as referred to in this Act, by a Notification published in the Nepal Gazette.

(2) On the dissolution of the Company Board pursuant to Sub-section (1), the appointment of the Chairperson, members and other employees serving in the Board shall *ipso facto* be terminated; and no compensation or additional amount shall be paid to them for such termination where any employee were deputed by other offices to the Board, their deputation shall *ipso facto* be terminated.

(3) On the dissolution of the Company Board pursuant to Sub-section (1), all cases, and petitions related thereto, filed in and under consideration of or yet to be decided by the Board under this Act shall be transferred to the Court .

Chapter- 21

Miscellaneous

172. Record of company and use of computer: (1) The records of any minute book, shareholders or debenture holders register, index of shareholders, books of account, accounts etc. required to be maintained by a company pursuant to this Act may be maintained either by making entries thereof in separate books or by recording the same by any electronic communication device and computer in a non-legible form or in any other manner, without prejudice to the provisions contained in this section.

(2) In case where the records of any minute books, shareholder or debenture holder register index of shareholder, books of account, accounts etc. have not been maintained by making entries thereof in a record book but maintained in any other manner, the following provisions shall be applicable.

- (a) If it is easily accessible to the place where the records of such minute book shareholder or debenture register index of shareholder books of account, accounts, etc. are maintained and where such records can be inspected or copies thereof can be obtained, such records shall be deemed to have been maintained in any specific place.
- (b) The company shall make adequate arrangements that no one can destroy or alter the records as referred to in Clause (a) and that the matters recorded therein can be easily traced and inspected and copies thereof can be obtained.
- (c) Where any matter has been so recorded that it is not legible, the matter shall be capable of being reproduced in a legible form.

(3) Where the records of any minute book, shareholder or debenture-holder register, index of shareholders, books of account, accounts etc. are put in an web site by using any electronic communication device or computer pursuant to this section, arrangements shall be made so that the date of such preparation of documents as well as the date of amendment thereto can be easily seen.

(4) Where a company has maintained the records of any minute book, register, index, books of account, accounts etc. maintained pursuant to this Act in a non-legible form and any law establishes the obligation of the company to allow such records for inspection or to submit copies thereof, then it shall be the obligation of the company to make such arrangements that the relevant portions of such records can be inspected and that copies thereof can be submitted in a visible or legible form.

173. Conversion of corporation owned by government of Nepal into Company:

(1) If the Government of Nepal wishes to convert a public corporation incorporated under the prevailing law, fully or partly owned by the Government of Nepal, or a development board formed under the Development Board Act, 2013 (1956) into a company, such corporation or board can be converted into a public company and incorporated under this Act.

(2) Notwithstanding anything contained elsewhere in this Act, there shall be no restriction on the number of promoter, shareholders, in the incorporation of a company as referred to in Sub-section (1).

(3) The movable and the immovable properties of the corporation or board as referred to in Sub-section (1) may be valued and converted into the share capital of the company to be incorporated pursuant to Sub-section (1), and where such conversion is made, all assets and liabilities of such corporation or board shall devolve on such company, except as otherwise provided in the articles of associations.

(4) Notwithstanding anything contained elsewhere in this Act, the number of directors of a company incorporated under this section shall be as specified in the articles of association of the company; and no such directors shall be required to subscribe any shares to become a director.

(5) A company as referred to in this section may sell its shares in bulk to the private sector through the stock exchange or directly by negotiations.

174. Predecessor to handover charge to successor: Any director or any other officer or employ of a company shall, on the expiry of his/her term of office, hand over the documents in his/her charge to the successor director or officer or employ who is appointed to replace him/her to perform his/her functions, within thirty days from the date of such expiry; and if such predecessor hands over such documents, the successor shall take charge thereof accordingly.

175. Transactions between associated companies: (1) Where an agreement or arrangement is made between the following companies whereby any company directly or indirectly provides loan or other kinds of financial assistance, pays

any liability, provides guarantee or any other kind of security to another company or any other transactions other than an ordinary business transaction is done between them, it shall be deemed to be a transaction between the associated companies:

- (a) Any company and its holding company;
- (b) Any company and any subsidiary company of its holding company;
- (c) A subsidiary company of any company and the holding company of such company;
- (d) A subsidiary company of any company and another subsidiary company of its holding company.

(2) Where any transactions as referred to in sub section (1) is carried on , the associated company shall give a notice on such transactions, also setting out a following details to its shareholders and the Office as soon as possible:

- (a) Date of transaction and the parties involved in the transactions;
- (b) Nature of transaction and where transaction such as provision of a loan, provision of financial assistance and furnishing security has taken place under such transaction, the amount or the value thereof.

176. Restriction on transaction between companies: (1) No company shall, where directly or indirectly, lend money to another company in excess of an amount that is sixty percent of its paid-up capital and free reserves or an amount to be set by hundred percent of its free reserves, which ever is the higher, give guarantee for a loan borrowed by another company or make investment in the securities of another company in excess of the said amount.

(2) Provided, however, that this provision shall not apply to a company carrying on banking or financial transaction, insurance company, company with main objective to buy and sell securities, private company which

has not borrowed any loan from a bank or financial intuitions, company with objective to provide infrastructure facility, and investment made by the holding company in its fully owned subsidiary company, money lent by such holding company to such subsidiary and guarantee given by such holding company for a loan borrowed by such subsidiary and investment made in right shares issued under this Act.

(3) Subject to Sub-section(1) , a company shall maintain the details, as prescribed, on the moneys lent by it to another company, investment made by it in such company or guarantee given by it for a loan borrowed by such another company.

177. Merger of a company: (1) A public company may, by adopting a special resolutions in its general meeting to that effect, be merged with another company subject to Sub-section (3).

Provided, however, that, in the case of a private company it shall be as provided in its memorandum of association, articles of association or consensus agreement.

(2) A public company, upon merging into a private company or a private company, upon merging into a public company shall stand as a public company.

(3) If a resolution for merger is adopted pursuant to Sub-section(1),such company shall, within thirty days , make an application, setting out the following matters to the Office for approval:

- (a) In the case of a public company, a copy of the decision of the general meeting as referred to in sub- section (1) ,and in the case of private company , copies of the related provisions contained in the memorandum of the associations, articles of the associations, or consensus agreement authorizing the merger;
- (b) Last balance sheet and auditors report of the merging company;

- (c) A copy of the letter of consent in writing, of the creditors of the merging company and of the merged company;
- (d) Valuation of the movable and immovable properties of , and actual details of the assets and liabilities of, the merging company;
- (e) If the merging company and merged company have made a decision as to the creditors and employees and workers of the merging company, a copy of such decision;
- (f) The scheme of arrangement concluded between the companies for merger with each other.

(4) Where the information as referred to in Sub-section (3) is given to the Office, it shall study the matter given information and give its decision within three months.

(5) On receipt of an approval from the Officer for merger pursuant to Sub-section (4), all the assets and liabilities of the merging company shall be deemed to have been transferred to the merged company.

(6) The office shall maintain separate records of the merging company in the company registration book.

(7) Except as otherwise provided in the memorandum of association, articles of association or consensus agreement of the company, a shareholder who does not express his/her consent in writing to the unification or merger or alteration in, or transfer of, shares of the company or the sale of entire assets of the company shall be entitled to get the company's assets valued prior to such unification, merger or alteration in or transfer of shares or sale of assets and get return of the amount in proportion to the shares held by him/her from the merging company.

(8) Notwithstanding anything contained elsewhere in this Section, the Office shall not give approval for the merger of a company if such merger

appears to create a monopoly or unfair trade restriction or to be contrary to public interest.

- 178. Power to give directive:** If the office receives information through any source that any company, its director or officer or other employee has not done any such act as required to be done pursuant to this Act or the memorandum of association or articles of association or the consensus agreement, in the case of a private company, or has committed or is going to commit any act in contravention of this Act or the articles of association of the company, the Office may, by making or causing to be made an inquiry into the matter, give necessary directive to the concerned company, its director, officer or employee to do, or cause to be done, any act required to be done accordingly or to refrain from doing any prohibited act; and it shall be the duty of the concerned person to comply with such directive .
- 179. Bonus share:** (1) A company may, by adopting a special resolution in the general meeting, issue bonus shares to its shareholders, out of the amount available for the distribution as dividend.
- (2) Where a company is to issue bonus shares pursuant to Sub-section (1), the company shall give information thereof to the Office before issuing such shares.
- 180. Act done or action taken in contravention of this Act or the articles of association to be void:** Except as otherwise provided in this Act or the memorandum of association or articles of association, where any act or action required to be done or taken under this Act or the memorandum of association or articles of association has not been done or taken or any act or action prohibited thereunder has been done or taken by any company or in respect of such company, such act or action shall be void.
- 181. Notice on business of company:** (1) Where any notice is required to be given pursuant to this Act, memorandum of association, and the person entitled to such notice expresses, before or after the specified time, in writing that the notice is not necessary, the notice shall be deemed to have been received.

(2) If any shareholder is present in any Meeting in person or by proxy, he shall be deemed to have given up his/her right to receive a notice required to be given to him/her pursuant to this Act, the memorandum of association or articles of association.

182. Dividend: (1) Except in the following circumstance, dividend shall be distributed to the shareholders within forty five days of the decision made to provide dividend:

- (a) If any law prohibits the distribution of dividend;
- (b) If the right to receive dividend is subject to any dispute;
- (c) If, in a circumstance beyond control of the company or for any reason, dividend cannot be distributed within the said time-limit.

(2) A company fully or partly owned by the Government of Nepal may distribute dividend only after obtain in prior approval of the Government of Nepal; and the Government of Nepal may give necessary directive on the matter of dividend to be distributed by such company.

(3) In the event of failure to distribute a dividend within the time limit as referred to in Sub-section(1), the dividend shall be distributed together with the interest thereon at such rate as may be prescribed.

(4) The person whose name is maintained in the shareholder register at the time of declaration of a dividend or his/her legal heir shall be entitled to such dividend.

(5) A company shall not pay or distribute a dividend in any other manner except out of the amount of profits set aside for the distribution of dividend.

(6) Before paying or declaring a dividend out of the profits for any financial year, a company shall have fully deducted the pre operation expenses, the amount required to be depreciated in accordance with the accounting standards fixed by the competent authority under the prevailing law, any

amount required to be paid or set aside out of the profits under the prevailing law or the amount or accumulated loss in previous financial years.

Provided, however, that if the prevailing law requires the establishment of a reserve or consolidated fund of any amount prior to distributing dividend, any company which is required to comply with such legal requirement shall not distribute dividend without establishing such reserve or consolidated fund.

(7) Subject to the various provisions contained in this Section, the board of directors of any company may, in the following circumstance, distribute interim dividend out of the profits for the previous financial year:

- (a) where the articles of association contain a provision on the distribution of interim dividend;
- (b) where the annual financial statement for the financial year out of the profits of which year interim dividend is to be distributed has already been certified by the auditor and approved by the board of directors.

(8) No company shall pay or distribute any amount in cash or kind, chargeable on its funds, to its shareholders, except a dividend approved by the general meeting.

(9) The amount of dividend not claimed/received by any shareholder even after the expiry of a period of five years after the date of resolution adopted by the company in its general meeting to distribute dividend shall be credited to the investor protection fund to be established under Section 183.

(10) In crediting the amount as referred to company shall, prior to the expiry of the period mentioned in that Sub-section, publish a notice in a national daily newspaper inviting the concerned to receive the dividend, within the time limit of at least one month.

(11) A company shall credit the amount of a dividend to be distributed to its shareholders pursuant to this Act to a separate account within forty five days after the date of approval by the general meeting and pay the amount of

dividend out of that account; and the company shall not use such amount for any other purpose.

183. Investor protection fund: (1) Where any investor does not present a claim to have refunded the amount invested in the shares of a company even within five years, there shall be established an investor protection fund to which such amount shall be credited.

(2) The amount credited to the fund established pursuant to Sub-section (1) may be spent for the improvement in the capital market, investment policy, companies law or law relating to trade, business and profession, training to the employees of the Office or the company or in any other activity relating to the company administration.

(3) The management and operation of the fund established pursuant to Sub-section (1) shall be as decided by a committee consisting of the Registrar, the Chairperson of the Securities Board or his/her representative and one representative appointed by the Securities Board from amongst the organization operating the stock exchange.

(4) The Office shall maintain the records of expenses made out of the fund established pursuant to Sub-section (1) and have the fund audited.

(5) Any amount obtained from the Government of Nepal, any donor agency or any person or body may also be credited to the fund established pursuant to Sub-section (1).

(6) Where any investor does not present a claim pursuant to Sub-section (1), prior to crediting the amount to the investor protection fund, a notice shall be published in a national daily newspaper inviting the concerned to receive such amount, within the time limit of at least one month.

184. Office of company: (1) Every company shall place a signboard containing its name and address in the Nepali language outside its registered office in a manner conspicuous to all.

(2) Every company shall have the address of its registered office registered with the Office within three months of its incorporation.

(3) A company may change the address of its registered office by giving a prior notice to the Office.

(4) A company shall, after its registration, shall give information of its contact address such as telephone, fax, email, etc. to the Office; and where such address is changed, the changed address shall be made available to the Office promptly.

(5) The Office may gradually prepare an index of addresses of the registered offices of companies and addresses as referred to in Sub-section (4) and keep such index open for inspection by the general public.

185. Appointment of company secretary: (1) A public company with the paid –up capital of ten million rupees or more shall appoint to the post of company secretary a Nepalese citizen who has the qualification mentioned in Sub-section (2).

(2) A Nepalese citizen who has worked in the related field for at least two years after obtaining the professional certificate of company secretary issued by a native or foreign body authorized to issue the professional certificate of company secretary pursuant to the prevailing law or who has worked in the related field or in the field of company management for at least three years after doing at least bachelor degree in law, management ,commerce or economics may be appointed to the post of company secretary.

Provided, however, that this provision shall not apply to the company secretary who is incumbent at the time of commencement of this Act for three years after the date of commencement of this Act.

(3) No director of the concerned company shall be eligible to be appointed as the company secretary of such company.

(4) A person shall not be appointed to the post of company secretary of more than one company at the same time.

Provided, however, that this provision shall not bar the appointing of the company secretary of any principal company to the post of company secretary of the subsidiary company of such company.

(5) Where it is provided by this Act, the prevailing law or articles of association that any act has to be done by or through the company secretary, and the post of company secretary remains vacant in the company or any reason the incumbent company secretary fails to do such act or shows has inability to do such act, then any such employee of the company, who has the qualification referred to in this Act, as designated by the board of directors to do such act may perform such act in the capacity of company secretary.

186. Functions, duties and powers of company secretary: (1) It shall be the duty of the company secretary to implement, or cause to be implemented, the decisions made by the board of directors and the general meeting and the matters directed by the Office or the concerned bodies and to submit such returns, documents, decisions etc. as required to be submitted by the company to the Office or any other body pursuant to this Act or the prevailing law within the specified period.

(2) Subject to this Act, the memorandum of association and articles of association, the company secretary shall perform the following functions:

- (a) To call the meeting of the board of directors or the general meeting;
- (b) To prepare the agenda to be discussed in the meeting of the board of directors or the general meeting and send it to the concerned directors or shareholders;
- (c) To maintain the records of, authenticate and take charge of, the decisions of the meeting of the board of directors or the general meeting;
- (d) To send a notice of the allotment of shares and a call on shares pursuant to the decision of the board of directors;

- (e) To accurately and properly maintain, take charge of, and authenticate, the shareholder register and the records of shareholders and debenture-holders;
- (f) To refer the matter to the board of directors or the chief executive to record the pledge or mortgage of, and execute the transferal or transmission of any shares or debentures;
- (g) In cases where a claim, petition, grievance, suggestion, advice etc. has been made by any shareholder or debenture-holder in writing, to transmit such matter to the board of directors or chief executive or Office or other bodies; and to inform in writing the concerned shareholder or debenture-holder of the results of any act and action done and taken in regard thereto;
- (h) To perform such other functions as specified to be performed by the company secretary under the prevailing law or such other functions as prescribed.

(3) Except as per the decision of the general meeting, the company secretary shall not do, or cause to be done, any such act from or through the company as is to yield benefits to him/her.

(4) The company secretary shall observe the code of conduct as prescribed.

187. Validity of agreement between shareholders: (1) An agreement entered into between the shareholders of a company in respect of the management, operation of the company and the use of voting right conferred to them shall be binding on them.

Provided, however, that if any provision of such agreement is prejudicial to the interest of the company or its minority shareholders, such provision shall *ipso facto* be invalid to the extent.

(2) The concerned shareholder shall submit two copies of the agreement entered into under Sub-section (1) to the company within fifteen days after the date on which such agreement was entered into. The company shall submit a copy of the agreement so received from the shareholder to the Office within fifteen days after the receipt of the same.

188. Effect of inoperativeness of the Companies Ordinance, 2062(2005): With the Companies Ordinance, 2062 (2005) being inoperative, unless a different intention appears, the inoperativeness shall not:

- (a) revive anything not in force or existing at the time at which the Ordinance became inoperative;
- (b) affect the matter in operation as *per* the Ordinance or anything duly done or any punishment suffered thereunder.
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance;
- (d) affect any penalty, punishment or forfeiture incurred under the Ordinance;
- (e) affect any action or remedy made or taken in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid; and any such legal proceeding or remedy may be instituted, continued or enforced as if the Ordinance were in force.