

Town Development Fund Act, 2053 (1997)

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Amendments:

1. Income Tax Act, 2058 (2002) 2058-2-19 (1 April 2002)
2. Republic Strengthening and Some Nepal Laws
Amending Act, 2066¹ (2066-10-7 (21 Jan. 2010))

Act Number 26 of the Year 2053 (1997)

An Act made to establish Town Development Fund and to provide for provisions thereof

Preamble: Whereas, it is expedient to provide for provisions on establishment and operation of Town Development Fund in order to construct, develop and expand towns in Nepal, to conduct or cause to conduct basic social services and income oriented project therein, to provide necessary economic and technical support to the body related with the development of town which operates said services and project and to develop or cause to develop towns in well managed manner,

Now, therefore, be it enacted by the parliament in the Twenty fifth year of the reign of the His Majesty the King Birendra Bir Bikram Shah Dev.

¹ This Act came into force on 15 *Jeshta* 2065 (2008), *Prasasti* and the word "kingdom" has been deleted.

Chapter -1

Preliminary

1. **Short Title and commencement:** (1) This Act may be called "Town Development Fund Act, 2053 (1997)".
(2) This Act shall come into force immediately.
2. **Definition:** Unless subject or context otherwise requires; in this Act;
 - (a) "Fund" means Town Development Fund established pursuant to Section 3.
 - (b) "Basic social services" means street, road, electricity, bridge, drinking water, drainage, collection of garbage, public toilet, public library, school and similar other constructions to be made for public use and various services to be delivered for the interest of resident of town
 - (c) "Income oriented project" means public market, trade centre, bus terminal, slaughter house, godown and similar other income oriented project.
 - (d) "Body related with development of town " means the following institution which carries out functions related to land development as well as distribution thereof and basic social service and income oriented project in order to construct and develop towns.
 - (1) Government or non-government organization established pursuant to the prevailing law.
 - (2) Town development committee, metropolitan city, sub-metropolitan city or municipality constituted pursuant to the prevailing law.
 - (3) Village prescribed by the Fund on the basis of population and development from among the villages prescribed pursuant to prevailing law citing as town oriented village.

- (e) "Town" means metropolitan city, sub-metropolitan city, municipality and town oriented village.
- (f) "Loan" means credit to be provided as per the terms and conditions fixed by the Fund whether accepting or without accepting collateral or mortgage or other necessary deposit or guarantee of any movable and immovable property.
- (g) "Debtor" means body related with town development which takes loan from the Fund.
- (h) "Debenture" means bond issued by the Fund whether putting or without putting the property of the Fund as security.
- (i) "Board" means Board of directors constituted pursuant to section 14.
- (j) "Chairperson" means the chairperson of the Board.
- (k) "Member" means member of the Board and this term also includes chairperson and Member-Secretary thereof.
- (l) "Executive director" means executive director of the Fund appointed pursuant to Section 18.
- (m) "Prescribed" or as "prescribed" means prescribed or as prescribed in the Rules and Bye-laws made under this Act.

Chapter -2

Establishment, objectives, functions, duties and powers of the Fund

3. **Establishment of Fund:** (1) A fund called 'Town Development Fund is, hereby established in order to construct, develop and expand towns and to provide necessary economic and technical support to the body related with town development which carries out aforesaid functions.

(2) The Head office of the Fund shall be located at Kathmandu valley and the Fund may open its branch offices as per necessity in any place within Nepal.

4. **Fund shall be an autonomous body:** (1) The Fund shall be an autonomous and corporate body having perpetual succession.

(2) The Fund shall have its own seal for its act and activity.

(3) The Fund may, subject to this Act and Rules as well as Bye-laws framed there under, like an individual, acquire, dispose, sell or manage otherwise movable and immovable property .

(4) The Fund may, like an individual, sue or be sued from its name.

5. **Objectives of the Fund:** The Fund shall have the following objectives;

(a) To provide necessary economic and technical support to the body related with the development of town.

(b) To carry out or cause of carry out necessary functions to make the town neat and clean.

(c) To operate or cause to operate social service and income oriented project of various types.

(d) To carry out or cause to carry out functional research in order to identify the way of solution for the problems seen in respect of possible reforms to be made for the development of town.

6. **Functions, duties and powers of the Fund:** In addition to the functions, duties and powers mentioned in other sections of this Act, the Fund shall have following functions, duties and powers;

(a) To set the policy of operation and management of the Fund and to implement or cause to implement thereof.

(b) To approve annual as well as periodical programme and budget of the Fund and to manage or cause to manage necessary financial resources for the same.

- (c) To provide economic and technical support for construction, development and expansion of town and for operating basic social service and income oriented project and for the body related with town development.
- (d) To prepare necessary economic and technical infrastructure for construction, development expansion and diversification of town and to implement or cause to implement the programme relating with development of town and to encourage bodies related with development of town for their maximum participation in the said programme.
- (e) To provide necessary co-operation to train the staffs working in the body related with town development.
- (f) To provide necessary consultancy service to the body related with town development on the matter of town development.
- (g) To monitor and supervise the projects and programmes conducted from the loan provided by the Fund.
- (h) To act in accordance with the agreement concluded between Government of Nepal and a foreign organization in respect of the Fund.
- (i) To invest money of the Fund without prejudicing the interest of the Fund in order to purchase share, debenture or any other bond issued by any institution established pursuant to the prevailing law.
- (j) To approve the plan and programme of the Fund.
- (k) To cause to carry out the annual audit of the Fund.
- (l) To submit the annual report and audit report of each year to the Government of Nepal.
- (m) To approve organizational structure of the Fund and to create necessary post as per the said structure
- (n) To

perform other necessary functions to carry out the objectives of the Fund

7. **Fund may collect necessary service charge:** The Fund may collect service charge as prescribed for providing consultation service to the body related with town development.
8. **Fund may collect financial resources:** The Fund may collect necessary financial resources including loan, grant, donation or gift from the Government of Nepal, Government and non-government organization, foreign government or organization, international institution or agency in order to operate programme as per the objectives of the Fund.

Provided that, the Fund shall take prior approval of the Government of Nepal before collecting financial resources from a foreign government or an organization, international institution or agency.

9. **Bond may be issued and purchased:** (1) The Fund may issue and purchase debenture and other types of bond by fulfilling the procedures as referred to in the law in force

(2) While issuing and purchasing debenture and other types of bond pursuant to Sub-section (1), the Fund shall meet the process as prescribed.

10. **Power to put terms and conditions:** (1) The Fund shall, while providing loan or grant to the body related with town development, make agreement in writing by putting terms and conditions as per necessity for the protection of its interest and for proper use of the loan or grant provided by it to the debtor.

(2) While making agreement pursuant to Sub-section (1), the Fund may specify any pay back date, prescribe conditions to pay back the principal and interest of the loan taken by the debtor and to recover it from the property accepted as security, mortgage, other property and from the guarantor in case the terms and conditions fixed by the Fund are violated.

(3) While providing loan to a debtor, the Fund may prescribe terms and conditions to provide loan gradually in installments as prescribed in the form of cash, cheque or letter of commitment by causing to execute document for the entire loan by calculating interest from the date when the debtor receives an installment of total loan.

11. **Power of the Fund in case of a default of an agreement:** (1) In case a debtor breaches the terms and conditions provided in the agreement made pursuant to Section 10 by not repaying debt, its interest and amount taken as advance or in case there are adequate grounds that the amount of such loan can not be recovered, the Fund may, despite the time limitations to clear the loan is not expired, call back the payment of amount to be recovered from the debtor or seize, possess, rent and lease the collateral or other property of such debtor or sell the said property by auction through open basis or by sealed bids or by negotiation.

(2) In case the property of the debtor sold through auction by open bids or calling sealed bids or by negotiation pursuant to sub-section (1), the Fund shall return back the residual amount of the concerned debtor after recovering the amount to be recovered by it.

(3) In case the property of the debtor could not be sold through auction by open bids, calling sealed bids or by negotiation despite the attempt of time and again or in case it is sold in the received value that would not be in the interest of the Fund, the Fund shall take itself the ownership of such property by determining value of the said property as prescribed.

12. **Power of the Fund not to be terminated:** (1) Power of the Fund over the collateral accepted through the document shall not be terminated only for the reason that the Fund did not initiate any proceeding within the period mentioned in the said document in order to seize the collateral or to recover the loan.

- (2) In a condition of default in an installment, the power of the Fund to recover the interest and additional charge or to sell collateral shall not be affected only for a reason that the collateral was seized, possessed, rented leased or given to any person for profit sharing as per the condition mentioned in the agreement.
13. **Protection of loan investment made by the Fund:** In case anybody or an institution related to town development in which the Fund has made loan investment is dissolved or liquidated, the first claim over the assets of such body or institution shall be of the Fund.

Chapter – 3

Formation, functions, duties and powers of the Board

14. **Formation of the Board:** (1) A Board of Directors shall be formed in order to operate or cause to operate the necessary programme smoothly to carry out the objectives of the Fund and to monitor and manage the entire acts and activities of the Fund.
- (2) The board shall consist of the following members;
- (a) Secretary, Ministry of housing and physical planning or a person designated by the Government of Nepal from among those who has special knowledge in the field of town development
 - (b) Representative (Gazetted first class) from the Member Ministry of Finance
 - (c) Representative (Gazetted first class) from the Member Ministry of Local Development

- (d) Five persons nominated by the Government of Nepal from amongst the mayors of Municipalities to be represented Five Development Regions Member
- (e) Two persons nominated by the Board from amongst the economists having expertise in the field of the operation of financial institution or among technicians serving in the field of town development who holds a bachelor degree in engineering or amongst the persons who represent the institution related to town development Member
- (f) Executive director Member-secretary

(3) The tenure of the members nominated pursuant to Clause (d) or (e) of Sub-section (2) shall be two years. If the post of a nominated members falls vacant prior to the expiry of his/her term, the post shall be filled for the remaining period following the same process which was initially followed to fulfill the post.

(4) The Board may, if it deems necessary, invite any national or foreign expert, an advisor or a renounced person engaged in the functions of town development as an observer to take part at the meeting of the Board.

15. **Meetings and Decisions of the Board:** (1) The meeting of the Board shall be held on such date, time and at the venue as fixed by the chairperson.

Provided that, the meeting of the Board shall be held at least six times in a year.

(2) The Member secretary shall call the meeting of the board upon taking approval from the chairperson in case one third members request in writing to call the meeting.

(3) The Member secretary of the Board shall provide agenda to be discussed along with a notice of the meeting to the member

(4) The chairperson shall preside over the meeting of the Board and in the absence of chairperson the member chosen from among the members themselves shall chair the meeting.

(5) It shall be deemed to have constituted the quorum of the meeting in case more than fifty percent of the members of the total members are present in the meeting.

(6) Majority opinion in the meeting of the board shall prevail in the meeting and in case of tie the person presiding over the meeting of the board shall exercise a casting vote.

(7) The name of members attending in each meeting of the Board, the agenda discussed and the minutes of the meeting shall be maintained in a separate minute book upon putting the signature of the members who attended the meeting.

(8) The minutes of the Board shall be authenticated by the Member-secretary.

(9) Others procedures relating to the meeting of the Board shall be determined by the Board itself.

16. **Functions, duties and powers of the Board:** (1) It shall, subject to this Act, Rules and Bye-laws framed there under, be the duty of the Board to perform all acts and activities to be carried out by the Fund and to exercise all powers conferred to the Fund and to fulfill the duty of the Fund.

- (2) In addition to the functions and duties provided in sub-section (1) it shall be the duty of the Board to perform other functions which are essential to carry out the objectives of the fund.
17. **Sub-committee may be formed:** (1) The Board may form sub-committees as per necessity to carry out the functions of the Fund.
- (2) The functions, duties and powers of the sub-committee formed pursuant to Sub-section (1) shall be as prescribed by the Board.

Chapter - 4

Provisions relating to Executive director and staffs .

18. **Executive Director:** (1) The Board shall appoint an executive director on the basis of open competition from amongst the person having prescribed qualification in order to operate day to day functions.
- (2) Notwithstanding anything contained in sub-section (1), the Government of Nepal may, in consultation with the Board, designate the senior most employee of the Fund to work as the executive director of the Board for a period of Three months in maximum until the office of executive director is fulfilled.
- (3) The tenure of Executive director shall be Four Years.
- (4) Remuneration, terms, service and facilities of Executive director shall be as prescribed.
- (5) Notwithstanding anything contained in sub-section (3), in case the executive director commits any act which causes loss to the Fund or acts against the policy or directive of the Board, the Board may remove the Executive Director from his/her post by fulfilling the procedures as prescribed.
19. **Functions, duties and powers of the Executive director:** (1) The Executive Director shall have the following functions, duties and powers.

- (a) To enforce or cause to enforce the decision of the Board.
 - (b) To prepare long-term and short term plan, annual programme and budget of the Board and submit to the Board for approval.
 - (c) To implement or cause to implement the plans and programmes approved by the Board.
 - (d) To monitor and supervise the day to day functions of the Fund and to carry out necessary functions as per the objective of the Fund.
 - (e) To monitor the plans and programmes operated in the investment of the Fund and to submit a progress report thereof to the Board.
 - (f) To prepare an annual or a periodic report of the programme operated by the Fund and to submit it to the Board.
20. **Provisions relating to employees:** (1) There shall be employees, in necessary number, in the Fund to smoothly operate smoothly the functions of the Fund.
- (2) The appointment, remuneration, facilities and conditions of service of the employees shall be as prescribed.

Chapter -5

Fund and audit of account

- 21 **Fund:** (1) The Fund shall have a separate fund and the following moneys shall be deposited in to the Fund.
- (a) Money acquired from the Government of Nepal.
 - (b) Aid, grant or loan received form a foreign government, national or an international institution or organization.
 - (c) Donation or gift obtained from a national or foreign institution or an organization.
 - (d) Fees collected from body related to town development in consideration of providing service and consultation.

- (e) Money earned from the investment of the Fund.
- (f) Money acquired for issuing debenture or any other types of bond.
- (g) Money earned from the movable and immovable property of the Fund.
- (h) Money received by the Fund from any other sources.

(2) The total money to be received by the Fund pursuant to Sub-section (1) shall be deposited in a commercial Bank situated within Nepal.

(3) All expenses to be made by the Fund shall be charged on the money deposited in the fund pursuant to sub-section (1).

(4) The operation of fund shall be as prescribed.

22. **Account and audit:** (1) Income and expenditure account of the fund shall be maintained as prescribed.

(2) The annual audit of the income and expenditure account of the Fund shall be carried out by the auditor appointed by the Board from amongst the auditors recognized by the Auditor-General upon taking consultation with Auditor-General.

(3) Fund may, if it deems necessary, cause to carry out its internal audit by any auditor.

(4) The Government of Nepal may, if it intends, may hold an inquiry or cause to hold an inquiry into an annual account of the Fund at any time.

Chapter -6

Miscellaneous

23. **Rebate to be provided to the Fund:** While accepting collateral by executing document from a debtor or surety or while transmitting the said collateral in the name of the Fund or while purchasing or selling immovable

property for the Fund, no stamp duty or registration fee shall be charged for the Fund.

24.²

25. **Restriction to participate in decision making process:** No member and employee shall be entitled to participate in the decision making process related with a matter which falls under his/her conflict of interest.

26. **No function shall be void:** No act or activity of the Fund shall be void only for a reason that a post of a member of the Board falls vacant.

27. **Oath of secrecy and honesty:** A member and employee shall take the oath of secrecy and honesty as prescribed before assuming his/her office.

28. **Annual Report:** (1) Executive Director shall submit an annual report of the Fund to the Board within Six months from the end of each fiscal year; and he/she shall submit a copy of the said report approved by the Board to the Government of Nepal.

(2) The Executive Director shall, on the approval of the Board, make public the report pursuant to Sub- section (1) each year.

29. **This Act to prevail:** Notwithstanding anything contained in the prevailing law, the matter set forth in this Act shall be governed by this Act.

30. **Meeting allowance:** Members shall obtain meeting allowances as prescribed for taking part at the meeting.

31. **Government of Nepal may issue order or directives:** The Government of Nepal may issue necessary order or directive to the Fund for carrying out act and activity as per the objectives of the Fund by holding an inquiry into the acts and activities performed by the Fund. It shall be the duty of the Fund to abide by such order or directives.

² Repealed by the Income Tax Act, 2058 (2002)

32. **Delegation of Power:** (1) The Board may delegate some of the powers conferred to it to any member or sub-committee constituted pursuant to section 17 or to the Executive Director.
- (2) The Executive directory may, as per necessity, delegate some of the powers conferred to him/her to any officer employee of the Fund.
33. **Government of Nepal may dissolve the Fund:** The Government of Nepal may dissolve the Fund in any the following situations;
- (a) If the Government of Nepal concludes that the Fund is unable to pay back the amount of loan received from the Government of Nepal, a foreign Government, national or an international institution or an organization to the respective party.
- (b) If the Fund fails to carry out the objective of this Act.
- (c) If the Government of Nepal concludes that it is expedient to dissolve the Fund since the Fund has violated the order or directives issued by it pursuant to Section 31.
34. **Property and Liability to be transferred:** In case the Fund is dissolved pursuant to Section 33, the entire property and liability of the Fund shall be transferred to the Government of Nepal.
35. **Liaison with the Government of Nepal:** The Fund shall liaise with the Government of Nepal through the Ministry of Housing and Physical Planning.
- Provided that, the Fund may directly contact with the concerned agency for daily administrative functions related with the Fund.
36. **Power to frame Rules and Bye-laws:** (1) The Government of Nepal may frame necessary Rules to carry out the objectives of this Act.
- (2) The Fund may, subject to this Act and Rules framed there under frame necessary Bye-laws to carry out it functions.

37. **Repeal and Saving:** (1) The Town Development Fund Board (Formation) Order, 2045 is, hereby, repealed.

(2) The entire movable and immovable property and entities as well as liabilities of the Board constituted pursuant to the formation order mentioned in Sub-section (1) shall be transferred to the Board constituted pursuant to this Act.

(3) All the acts and activities performed by the Board constituted pursuant to the formation order mentioned in sub-section (1) shall be deemed to have been performed by the Fund established pursuant to this Act.

(4) The executive director and employee serving in the Board constituted pursuant to the formation order mentioned in sub-section (1) shall be transferred to the Fund as if they were appointed pursuant to this Act.