

↔ **Companies Act, 2053 (1997)**

Date of Royal Assent and Publication:

2053.11.22 (5 March 1997)

Act Number 35 of the Year 2053 (1997)

An Act made to Provide for Matters Relating to Companies

Preamble: Whereas, it is expedient to make incorporation, operation as well as administration of the companies easy, simple as well as transparent;

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

Chapter- 1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called "the Companies Act, 2053 (1997)."
(2) This Act shall come into force immediately.
2. **Definitions:** In this Act, unless the subject or the context otherwise requires,-
 - (a) "Company" means any Company incorporated under this Act.
 - (b) "Private Company" means any Private Company incorporated under this Act.
 - (c) "Public Company" means any Public Company incorporated under this Act.

↔ Repealed by Company Ordinance, 2062. published in Gazette in 2062.6.23..

- (d) "Principal Company" means any Company having control over a subsidiary Company.
- (e) "Subsidiary Company" means any Company under the control of the principal Company as set forth in Section 120.
- (f) "Promoter" means a person who, having agreed to subscribe at least one share, affixes his signature in the capacity of a promoter on the Memorandum and Articles to be furnished in the Office for the incorporation of the Company under this Act.
- (g) "Memorandum" means the memorandum of association of a Company.
- (h) "Articles" means the articles of association of a Company.
- (i) "Prospectus" means a prospectus to be published by a Company pursuant to Section 20 of this Act.
- (j) "Share" means the allotted portion of share capital of a Company.
- (k) "Preference Share" means a share having preference over ordinary shares in payments to be made while distributing dividends and liquidating a Company.
- (l) "Ordinary Share" means a share other than a preference share.
- (m) "Bonus Share" means a share issued as an additional share to the Shareholders by capitalizing the surplus from the profit or the reserve fund of a company, and this term includes the increase of the paid up capital of the share by capitalizing the surplus or reserve fund.

- (n) "Shareholder" means a person having ownership in the share of a Company.
- (o) "Debenture" means any credit bond issued by a Company under this Act with or without pledging its assets.
- (p) "Registration book" means the registration book of the Shareholders or Debenture holders as referred to in Section 35.
- (q) "Securities" means the shares, bonds, debentures, stocks or credit issued by a Company, and this term includes the receipt relating to deposits of securities, as well as the rights and entitlement relating to the securities.
- (r) "Underwriting of Securities" means an undertaking made by an organization having taken responsibility to sell the securities, to purchase the securities by own if it fails to sell the securities as per the undertaking made by it.
- (s) "Director" means a director of the Company appointed pursuant to Section 71.
- (t) "Board of Directors" means the board of directors of a Company as referred to in Section 70.
- (u) "Managing Director" means the managing director of a Company appointed pursuant to Section 77.
- (v) "Unanimous Agreement" means an agreement made Unanimously by all the then existing Shareholders of a Private Company in regard to the operation of the Company.
- (w) "Company Secretary" means the Company Secretary appointed pursuant to Section 142.

- (x) "Office" means the Office of the Company Registrar of His Majesty's Government.
- (y) "Registrar" means the Registrar of the Office.
- (z) "Prescribed" or "as prescribed" means prescribed or as prescribed by His Majesty's Government upon a notification published in the Nepal Gazette.

Chapter- 2

Incorporation of Company

3. **Incorporation of Company** : (1) Persons desirous of undertaking any enterprise with an intention of making profit may severally or collectively incorporate a Company for the attainment of one or more objectives set forth in the Memorandum.

(2) Any foreigner having obtained approval under the prevailing law to carry out any enterprise with a motive of making profit by making investment within the Kingdom of Nepal, may also incorporate a Company pursuant to Sub-section (1).

(3) There shall be at least Seven promoters for incorporation of a Public Company.

Provided that, Seven promoters shall not be required for incorporation of another Public Company by any Public Company.

4. **Application for Incorporation of Company**: Any person willing to incorporate a Company pursuant to Section 3 shall have to make an application to the Office, in a format and along with such fees as may be prescribed and with the following documents:

- (a) The Memorandum of the proposed Company.

- (b) The Articles of the proposed Company.
- (c) In the case of a Public Company, a copy of an agreement, if any, made between the promoters prior to the incorporation of the Company.
- (d) In the case of a Private Company, the copy of a Unanimous Agreement, if any.

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

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

(3) There shall be maintained in the Office a Registration Book in the format as prescribed, for the purpose of Sub-section (1).

6. Power to Refuse to Register a Company: The Registrar 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 of any Company previously registered and is in existence at present.
- (b) If the name of the proposed Company seems to be improper or undesirable from viewpoint of public interest, decency, etiquette etc.
- (c) If the objective of the proposed Company is contrary to the prevailing law.

(d) If the requirements for incorporation of the Company under this Act are not fulfilled.

7. **Information of Refusal to Register:** In refusing to register any Company in the event of any of the circumstances mentioned in Section 6, the Registrar shall give the information thereof, along with the reasons therefor, to the applicant within Fifteen days of the date on which the application was made for incorporation of the Company pursuant to Section 4.

8. **Company to be Body Corporate:** (1) Any Company incorporated under this Act shall be an autonomous corporate body having perpetual succession.

(2) There shall be a separate seal of a Company for all of its business and activities.

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

(4) A Company may sue or be sued in its own name.

9. **Limited Liability:** The liability of the Shareholders in regard to the transactions of the Company incorporated under this Act shall be limited only to the maximum amount of the Shares subscribed or undertaken to be subscribed by him.

10. **Number of Shareholders:** (1) The number of the Shareholders of a Private Company shall not be more than Fifty.

(2) Subject to Sub-section (3) of Section 3, the number of a Public Company must be Seven in minimum without any upward limit.

11. Terms to be Abided by Company : Any Company incorporated under this Act shall have to abide by the following terms, in addition to those set forth in this Act, Memorandum or Articles:–

- (a) It shall have to carry out all such acts and transactions in the name of the Company as are to be carried out by it.
- (b) A Private Company and a Public Company shall have to add to their name the term "Private Limited" and "limited", respectively.
- (c) A Private Company shall not sell its Shares and Debentures publicly. Except as provided in the Memorandum, Articles or Unanimous Agreement, a Private Company shall not pledge, mortgage, or otherwise transfer its title to, its Securities to any person other than its own Shareholders.
- (d) A Company shall not open a partnership or Private firm.

12. Conversion of Private Company into Public Company: (1) A Private Company may be converted into a Public Company in the following circumstances:

- (a) If the General Meeting of the Private Company, by adopting a special resolution, decides to convert the Company into a Public Company.

Provided that, no Private Company may be converted into a Public Company unless it fulfills the requirements to be fulfilled under this Act for being a Public Company.

- (b) If Twenty Five per cent or more of the shares of a Private Company have been purchased by one or more Public Companies.

Provided that, while calculating the above-mentioned percentage, in the event of possession of shares by any banking or financial Company as a trustee, such shares shall not be taken into account.

- (c) If a Private Company purchases Twenty Five per cent or more of the shares of a Public Company.

(2) The details of a decision referred to in Clause (a) of Sub-section (1) shall be submitted by the concerned Company to the Office within Thirty days of such a decision. In the event of submission of the details of such a decision to the Office, the Registrar shall have to record such details of change in the Company registration book and convert the Company into a Public Company.

(3) In the circumstances referred to in Clauses (b) and (c) of Sub-section (1), such a Private Company shall, *ipso facto*, be deemed to have been converted into a Public Company on the very date of occurrence of such circumstances. Any Company so converted into a Public Company shall have to notify the Office thereof within Seven days of such conversion. Upon receipt of such a notice in the Office, the Registrar shall record the details of such conversion in the company's registration book and update the records.

(4) In the event of conversion of any Private Company into a Public Company pursuant to this Section, all the subsidiary companies of that Company shall also, *ipso facto*, be converted into the Public Company from the same date.

(5) In the event of conversion of any Private Company into a Public Company pursuant to this Section, all the provisions applicable to the Public Company pursuant to this Act shall apply to that Company.

(6) All the properties and liabilities of any Private Company converted into a Public Company under this Section shall be devolved on the successor Company.

13. Conversion of Public Company into Private Company: (1) If the number of Shareholders of any Public Company becomes Fifty or less than that, such a Company may, by adopting a special resolution at the General Meeting, be converted into a Private Company.

(2) The details of a decision relating to special resolution adopted pursuant to in Sub-section (1) shall be submitted by the concerned Company to the Office within Thirty days of such decision. In the event of submission of such a decision to the Office, the Registrar shall record the details of such change in the company registration book and update the record.

(3) Upon conversion of a Public Company into a Private Company pursuant to Sub-section (2), all the properties and liabilities of the Public Company shall devolve on the successor Company.

14. Service of Summons, Notice etc.: (1) Notwithstanding anything contained in the prevailing law, if any notice, summons, letter rogatory etc., required to be served on a Company, Director or employee of a Company in regard to a matter pertaining to the transaction of, or any matter related with, the company, is sent through the telefax, telex, or similar other electronic device installed in the registered Office of the Company or if such notice, summons, letter rogatory etc. is delivered or sent by a registered mail, it shall be deemed to have been duly served. If any notice, summons, letter rogatory etc., can't be so served, the concerned Company, Director or employee may be informed thereof by broadcasting or publishing a notice pertaining thereto through radio,

television or in any newspaper of 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 summons, notice, letter rogatory etc. is to be served, on behalf of the Company or any competent authority or court, on any Director or any employee of the Company in any matter related with the functions of the position, it may be sent to the address of the telex, telefax, if any, given by such director or employee, and where such address has not been given, to the given postal address by a registered post; and where it has been so sent, the notice shall be deemed to have been duly served.

Chapter- 3

Memorandum, Articles and Prospectus

15. **Memorandum**: (1) The following particulars shall be clearly mentioned in the Memorandum:
- (a) Name of the Company.
 - (b) Address of the registered Office of the Company and place of transactions.
 - (c) Objectives of the Company.
 - (d) Activities to be carried out for the accomplishment of the objectives of the Company.
 - (e) Amount of the authorised capital of the Company and number of shares of different categories.
 - (f) Amount of capital of the Company to be issued at the moment.

- (g) Restriction, if any, on the purchase or transfer of Shares.
- (h) Number of shares which the promoters have undertaken to purchase forthwith.
- (i) Other necessary matters.

(2) In the case of a Public Company, the Memorandum shall also contain following matters, in addition to those mentioned in Sub-section (1), in case of the following matters are to be performed or happened:

- (a) Entitling the promoters or any other person to subscribe the Shares or to acquire any little to the Shares in any manner other than by making payment in cash,
- (b) Providing for acquisition of any property in any manner by the Company from the promoter or from any other person at the starting of the activities of the company,
- (c) Making the Company itself liable to bear the expenses incurred for its incorporation,
- (d) Conferring any special privilege or right to the promoter or to any other person from the Company.
- (e) In cases where any Memorandum is inconsistent with this Act, it shall be void to the extent of its inconsistency.

(3) The format of the Memorandum shall be as prescribed.

16. Signatures to be Affixed on Memorandum: (1) Any Memorandum shall mention the full name and address of all the promoters of the Company, shall indicate the number of shares which each of them has undertaken to subscribe, and shall be signed by each of them.

(2) The Memorandum shall also contain the signature of at least One witness of each promoter.

17. Articles: (1) A Company shall have to frame the Articles in order to properly regulate its business and attain the objectives set forth in the Memorandum.

(2) The Articles shall contain the following particulars:

- (a) Directors, and their term of Office.
- (b) Minimum number of shares to be subscribed to become a Director.
- (c) Number and term of Office of directors.
- (d) Matters relating to the mode of convening the company's meetings and notice to be given for such meetings.
- (e) Privileges and restrictions of the preferential Shareholders.
- (f) Powers and duties of the Managing Director.
- (g) Provisions relating to remuneration and allowances of Directors.
- (h) Matters set forth in the Memorandum.
- (i) Other necessary matters.

(3) If any provision of the Articles is inconsistency with the Memorandum, such provision shall be void to the extent of such inconsistency.

(4) The format of the Articles shall be as prescribed.

- 18. Alteration in Memorandum or Articles:** The General Meeting may, subject to Section 6, amend the Memorandum or Articles by passing a special or ordinary resolution to that effect. The Company shall notify the Office of such amendment made in the Memorandum or Articles.

Provided that, if any Company has to amend its name, it may amend its name by adopting a special resolution at the General Meeting and only by obtaining prior approval of the Office.

- 19. Memorandum and Articles to be Published:** (1) Every Public Company shall have to publish its Memorandum and Articles within Three months of getting permission to commence its business.

(2) In the event of any amendment to the Memorandum or the Articles, the amended Memorandum or Articles shall have to be published within Three months of such amendment.

- 20. Prospectus to be Published:** (1) Every Public Company shall have to publish its prospectus before issuing its securities.

(2) Prior to publishing the Prospectus pursuant to Sub-section (1), the Directors shall have to submit a copy thereof duly signed by them to the Office. In case any important matter has been omitted in such Prospectus or it contains unnecessary matter included in such Prospectus, the Office may cause such Prospectus to be amended or altered as required, and grant approval for its publication.

(3) The matter that the prospectus has been approved by the Office shall be clearly mentioned while publishing such Prospectus.

21. Particulars to be Stated in Prospectus: (1) The following particulars shall have to be set out in the Prospectus:

- (a) The objectives of the Company, and main particulars set forth in the Memorandum and Articles, and the place where the Memorandum and Articles can be obtained,
- (b) Minimum number of shares required to be subscribed to become the Director, and the salaries, allowances or remuneration fixed for Directors,
- (c) Description of cash received or to be received as remuneration or reward by the promoters or directors of the Company,
- (d) Provisions on bonus share,
- (e) Provisions, if any, regarding reservation of shares for any Shareholder, employee or other person,
- (f) Identification of Directors,
- (g) If the shares are to be sold publicly by adding premium, reasons for, and justification of, the addition of premium,
- (h) Provisions on the representation of the Shareholders subscribing the shares to be sold Publicly in the Board of Directors,

- (i) The minimum number of shares required to be subscribed and the amount of advance required to be furnished along with the application,
- (j) Where a loan has been raised by issuing the debentures, reasons therefor, and the number of the paid-up debentures and the total amount of outstanding loans,
- (k) Assets purchased from the proceeds of the sale of shares, the name of the seller of such assets, and arrangement, if any, made for the exchange of shares or debentures instead of cash,
- (l) Brokerage on shares and debentures,
- (m) Estimates of expenditures required for the business of the Company and that of its income for at least the next Three years,
- (n) Possible financial risks involved in the business to be carried on by the Company,
- (o) Financial arrangements of the company, and net worth remaining after the shifting of all liabilities,
- (p) Names and addresses of auditors, and if an audit report is available, description of such a report,
- (q) Where any fund of a Promoter or Director is involved in the assets purchased or intended to be purchased by the Company, details thereof and where any Promoter or Director is involved in any

other firm or partnership or Company, details thereof,

- (r) The time when the notice of allotment of the Shares is to be published,
- (s) Details of preliminary expenses in the incorporation of the company, in the case of a new company; and the real picture of the latest balance-sheet in regard to a Company already in operation,
- (t) Brokerage payable to any trust for being a trustee in regard to securities exchange,
- (u) The balance-sheet and profit and loss account of the Company, and the time and place of inspecting the same,
- (v) Details of the underwriting of shares, if any, and commission thereof,
- (w) Name and address of organization carrying on security exchange,
- (x) Name of Shareholders having subscribed the shares in excess of five per cent of the issued capital,
- (y) Privileges and restrictions of the preferential Shareholders,
- (z) Other necessary matters.

(2) The format of the prospectus shall be as prescribed.

22. Duties and Liabilities of Company: It shall be the duty and liability of any Company to abide by the matters set forth in the prospectus.

23. Responsibility for Particulars Contained in Prospectus: (1) The Directors signing the Prospectus shall be held responsible for the matters contained in the Prospectus.

(2) If the published Prospectus contains a false statement made deliberately or with a *mala fide* intention, the said Directors shall personally be liable to pay compensation to any person for any real loss or damage, if any, one has sustained by purchasing Securities on the faith of that prospectus.

Provided that, a promoter who resigns before the decision made by the Company to publish such prospectus, or who after having come to know about any false statement contained therein publishes a notice to that effect for the information of the General Public prior to the sale or allotment of securities or who proves that he/she was ignorant of the falsehood of statement set forth in the prospectus shall not be liable to such compensation.

24. Issuance of Duplicate Copies : (1) If a shareholder or any other person concerned demands for a duplicate copy of the Memorandum, the Articles, the Prospectus or the annual account or audit report, the concerned Company shall provide him with a duplicate copy of such documents upon collecting the prescribed fee.

(2) In case anybody demands for a copy of any document of a Public Company registered in the office, the Office shall provide him/her with such a copy upon collecting the prescribed fee.

Chapter- 4

Shares and Debentures

25. Face Value of Shares, and Application: (1) The face value of the shares of a Company shall be of One Hundred Rupees per Share.

(2) In inviting 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 that, in raising the capital by a Company in operation from a previous time by publishing its balance-sheet of its last Three years, this provision shall not be applicable.

(3) Any person who desires to purchase the share of a Public Company shall have to make an application in the format as prescribed.

26. Allotment of Shares: (1) Shares shall be so allotted within a maximum period of Three months of the date of invitation made it to the General Public for the subscription of the Shares, so allot the shares that all the applicants may get Shares, to the extent possible, and give the Shareholders, a notice to that in the format as prescribed.

Provided that, the allotment of shares shall not be made if at least Fifty per cent of the Shares cannot be sold.

(2) If the Company submits an application explaining the reason for non-allotment of Shares within the time-limit set forth in Sub-section (1) owing to the reason mentioned in the Proviso to Sub-section (1), within Seven days after the expiry of that time-limit for up to Three months for the allotment of Shares.

(3) If the allotment of Shares cannot be made even within the time-limit set forth in Sub-section (1) or (2), the amount received as well as an interest thereon, as prescribed, from the expiry of such time-limit, to the day of the refund of such amount shall be refunded.

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

27. **Particulars of Shares to be Submitted to Office**: Particulars of the number of allotted shares, the total value thereof, the names and addresses of shareholders, and the amount paid for as well as the amount due on, each share, and where the shares of the Company have been sold or distributed in any manner other than in cash, the duly issued copy of the agreement made in that connection shall be forwarded to the Office within Thirty days of the allotment of Shares.
28. **Transactions in Securities** : (1) While issuing its securities by a Public Company to the General Public, it shall deal with the securities only through an organization recognized to do security transactions including all such acts as the sale, allotment and recovery of the sum of such securities.
- (2) Any Public Company shall provide a copy of the agreement made by it on the dealing of the securities through any organization to the Office within Seven days of the date of conclusion of such an agreement.
29. **Share Certificate** : (1) A share certificate in the prescribed format shall be issued to every shareholder in respect of each Share purchased by him/her, within 3 months of the allotment of the Shares, and it shall bear the signature of at least any Two among any director or administrative chief of the Company or Company Secretary, in the case of a Public Company, and the signature of the person as mentioned in the articles or Unanimous Agreement, in the case of a Private Company, and bear the seal of the Company.

(2) While issuing the share certificate in respect of any share held jointly by Two or more persons, it may be issued to any One of them, by mentioning their names therein.

Provided that, the names of all the Shareholders shall be mentioned in the Shareholder registration book.

(3) In cases a share certificate is lost or damaged, the owner thereof shall submit an application to that effect to the registered Office of the Company within Thirty Five days from the date of knowledge of such loss or damage.

(4) Where any application is submitted by any person under Sub-section (3), the Company shall, if the matter contained in the application seems to be genuine upon inquiry into all necessary facts relating thereto, issue share certificate to the applicant, upon receipt of the prescribed fee for the duplicate copy, and the matter shall also be recorded in the Shareholder registration book.

30. Raising Loans or Issuing Debentures: (1) A Company may, if it deems necessary to raise loans or issue debentures, specifying the reason therefor, the plan of action to be executed from the proceeds, and the estimated budget necessary for that purpose, with or without pledging or mortgaging the immovable assets of the Company.

Provided that, a Public Company shall not raise loans or issue debentures until it gets permission to commence its business.

(2) Notwithstanding anything contained in the prevailing laws, any Company may, subject to Sub-section (1), raise additional loans or issue debentures on the security of property which has already been used as the security from previous creditors, within the limit of the value

of such property, by clearly showing the previous creditors and the amount of loans already obtained.

(3) If the loans are to be raised or debentures are to be issued pursuant to Sub-section (1) or (2), the Company shall have to inform the Office thereof, and the deed on the pledge or mortgage shall get registered in accordance with prevailing law.

(4) Notwithstanding anything contained in prevailing laws, the matters including the terms, repayment period and interest of the loans obtained or provided by any Company shall be as set forth in a deed or bond entered into between the lender and the borrower.

(5) In case any loans or debentures are to be raised or issued by establishing any trustee, the agreement to be made between such trustee and the Company shall govern the matters relating to the lender and the borrower.

31. Sale or Pledge and Mortgage of Shares or Debentures: (1) The shares or debentures of a Company may be sold, mortgaged or pledged like a movable property, subject to this Act, Memorandum and the Articles.

(2) Notwithstanding anything contained in Sub-section (1), promoter to a Company shall not sell or pledge or mortgage the share held by him/her unless and until the first General Meeting of the Company has been held and the calls on the shares issued in his/her name are fully paid up.

(3) In cases where the pledge or mortgage of Shares or Debentures has been executed pursuant to Sub-section (1), the pledge or mortgagee shall have to 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 transaction recorded in the registration book. Such application shall be accompanied by the documents on the pledge or mortgage as well as the share or debenture certificate.

(4) In the event of submission of an application pursuant to Sub-section (3), the Company shall have to mention, in the registration book, the transaction of such mortgage or pledge; and upon receipt of information of redemption of the share or debenture so pledged or mortgaged, the records of such mortgage or pledge shall be struck off the registration book.

32. Transmission of Shares or Debentures : (1) If Shares or Debentures are sold subject to Sub-sections (1) and (2) of Section 31, the buyer thereof shall have to make an application to the registered Office of the Company in the prescribed form and along with the prescribed fee to have such debentures or Shares transmitted to his name. A copy of the deed relating to the sale or purchase of the shares or debentures and the share or debenture certificate shall also be submitted with such application.

(2) If any application is made under Sub-section (1), the name of the former shareholder or debenture holder shall be struck off, and the name of the present one shall be entered in the registration book.

33. Refusal to Register Share or Debenture: (1) Notwithstanding anything contained in Sections 31 and 32, a Company may refuse to record any pledge or mortgage of a share in the registration book or to effect transfer of a share or debenture where it has been purchased or sold, in the following circumstances:

(a) In case calls on the share have not been paid up,

- (b) In case any document and the share or debenture certificate and the fees required to be submitted pursuant to Section 31 or 32 have not been submitted together with such application.

(2) In refusing to mention in the registration book the pledge or mortgage or transfer of shares or debentures pursuant to Sub-section (1), the Company shall have to give information thereof to both the transferor and the transferee or the mortgagor and mortgagee of the shares or debentures within Fifteen days of the date of filing of application.

34. Other Circumstances When Shares or Debentures May be

Transferred: If any Shareholder or Debentureholder dies or becomes insolvent or if the title to the share or debenture held by him/her devolves on any other person under prevailing laws, and the person on whom the title is so devolved makes an application to the Company, accompanied thereby the evidence thereof, and with such fees and in the format as prescribed, the Company shall have to transmit such share or debenture to his name.

35. Registration Book of Shareholders or Debentureholders: (1) Each Company shall have to maintain a registration book of Shareholders or debentureholder in the format as prescribed at the registered Office of the Company.

(2)The following matters shall be mentioned in the registration book of Shareholders referred to in Sub-section (1) in regard to each shareholder, according to the serial number of the 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 for the Share,
- (d) Date of registration of his name as a Shareholder,
- (e) Date when his/her name was struck off.

(3) The following shall be mentioned in the registration book of Debentureholders referred to in Sub-section (1) in respect of each Debentureholder according to the serial number of the debentures:

- (a) Full name and address of Debentureholder,
- (b) Number of debentures subscribed by the Debentureholder,
- (c) Total amount paid up for the debenture and outstanding amount payable by him,
- (d) Date of the registration of his name as a Debentureholder,
- (e) Date when his/her name was struck off.

(4) Any Shareholder and Debentureholder of the Company may, if he/she so desires, inspect the registration book.

Provided that, in the case of a public company, the Company may, by Seven days' advance notification in the national newspaper, and in the case of a Private Company, as mentioned in the Articles or Unanimous Agreement, close inspection of the registration book for a maximum period of Thirty days at one time and upto a maximum cumulative period of Forty-Five days in one year.

(5) Any person, if he/she so desires may except in cases where the inspection has been closed pursuant to proviso Clause to Sub-

section (4), receive a copy of the registration book upon payment of such fees as prescribed, in the case of a Public Company, and of such fees as mentioned in the Memorandum, Articles or Unanimous Agreement, in the case of a Private Company.

36. Records of Shares, Debentures, Loans etc.: (1) Each Company shall prepare and maintain the records of the existing and former Shareholders and Debentureholders as of Fifteen days before the Annual General Meeting is held.

(2) The records mentioned in Sub-section (1) shall also clearly contain the following particulars:

- (a) Authorized capital and number of shares of the Company,
- (b) Issued share capital,
- (c) Calls made on each share,
- (d) Total amount paid up on installments,
- (e) Total amount due on installments,
- (f) Total amount paid on shares and debentures as brokerage,
- (g) Total number of shares, forfeited if any, reasons, and the date thereof,
- (h) Names and addresses of the incumbent directors.

(3) The records referred to in Sub-section (1) shall be signed by at least one Director and be submitted to the Office within Thirty days from the date of holding of the Annual General Meeting of the Company.

37. Lien on Shares : The Company may withhold the shares registered in the name of the Shareholders as well as dividends payable thereon for payments of calls on the shares due and payable to the Company from them or any amount payable by them to the Company under prevailing laws, and recover the calls from such dividends.

38. Payment on Shares: (1) Payment in respect of shares shall be made whenever calls for payment of installment are made in accordance with the articles.

(2) When making calls by a Public Company for payment of installment pursuant to Sub-section (1), the Company shall send a notice in writing to each Shareholder in the prescribed format, specifying a time-limit of at least Thirty days and the installments payable by him/her, the place and time for payment. And such notice shall also be published in a newspaper of national level for at least Two times.

(3) If any Shareholder fails to pay the amount due on the shares within the time limit referred to in Sub-section (2), a notice shall be sent to him/her and shall also be published in the newspaper of national level at least Two times, extending the time-limit by Three months of the expiry of that time-limit and specifying clearly that in case payment is made within that time-limit, it shall be accepted subject to payment of interest at the prescribed rate, and if he fails to make payment even within that time-limit, his/her share shall be forfeited. If the installments are not paid even within the time-limit so notified, the share in respect of which the notice was given shall be forfeited.

Provided that, the Board of Directors may, if it deems reasonable, retain the share as fully paid up to the extent of the amount actually paid up.

(4) The shares forfeited under Sub-section (3) may be sold or otherwise disposed off or cancelled in such a manner as the Board of Directors may, subject to the Articles, deem appropriate.

39. Payment of Installment Regarding Shares Held Jointly: The installments of the shares held jointly may be paid by the share partners jointly or individually.

40. Equal Portions in the Shares to be Presumed: Where there is no deed duly made specifying the portion owned by each Shareholder in respect of shares held jointly, the holders shall be presumed to have owned equal portion thereof.

41. Owner of Shares and Debentures: The person in whose name the shares or debentures are registered in the records of the Company shall be regarded as the owner thereof.

42. Increase of Share Capital: (1) If any Company intends to increase its share capital, it may increase its authorised capital by adopting a special resolution to this effect at its General Meeting, and obtaining approval of the Office, and shall make necessary amendments to the Memorandum and Articles accordingly.

(2) If it is necessary for the Company to increase the capital up to the limit of the authorized capital, the issued capital may be increased by adopting an ordinary resolution at the General Meeting, and necessary amendments shall be made to the Memorandum and Articles accordingly.

(3) If any Public Company is to issue new shares to increase its share capital pursuant to Sub-section (2), it shall publish a new Prospectus pursuant to Section 20.

Provided that, if the Company is to issue bonus share, the prospectus need not to be published.

(4) The first right to buy the shares issued under this Section shall be vested in the existing Shareholders in proportion to the shares subscribed by them.

Provided that, notwithstanding anything contained in this Sub-section, the Board of Directors may allocate the shares not exceeding five per cent of such shares for the employees and workers of the Company.

(5) Except from the profit or fund from the profit earned by the company, no increase in the share capital shall be made nor shall bonus shares be issued by reevaluating the property of the Company.

(6) If the Company is to issue the shares by adding the premium to the price of share, of the shares issued under this Section a prior notice shall be given to the Office.

(7) While issuing Shares pursuant to this Section, a time limit of at least Thirty Five days shall be given to the existing Shareholders to subscribe the Shares. If the existing Shareholders do not subscribe the Shares within the said time-limit, the Shares may be sold to other persons.

43. Reduction of Share Capital: (1) If a Company intends to reduce its share capital, it may reduce its share capital by adopting a special resolution to that effect at its General Meeting, and obtaining the approval of the Office, and shall make necessary amendments to the Memorandum and Articles, accordingly.

(2) After the approval of the Office is obtained, the Company may reduce its share capital in the following manner:

- (a) By reducing the capital to such an amount as has been actually paid up where calls for payment of installment made on shares are not fully paid up, or
- (b) By returning the capital already paid up, or
- (c) By devaluing shares, in case the Company has sustained losses or suffered from natural calamities.

44. List of Creditors to be Submitted to the Office: In forwarding a resolution seeking to reduce the capital to the Office for approval, the Company shall forward it, along with a list of its creditors with their full names and addresses, amount due to them and the real financial situation of the Company as of the previous Seven days and signed by all of its Directors.

45. Notice to be Issued by the Office: (1) The Office shall issue a Notification at least twice in a newspaper of national level at the cost of the Company so that those creditors whose names have been omitted, if any, by the Company from the list referred to in Section 44 may be able to make application to have their names entered to that list. The notice shall also specify a reasonable time-limit within which creditors may submit application opposing to the reduction in the share capital under Section 43.

(2) If each creditor of the Company seems to be agreed to reduce share capital or in cases where the loans of the creditors have been paid up, the Office may, remarking that matter, approve the special resolution on the reduction of capital.

(3) The Office may, prior to approving the special resolution on reduction of capital, issue such orders including to require to repay the loan of the creditor disagreeing to reduce the capital, to prohibit the

sale or mortgage of the company's assets pending the settlement of all loans, to prohibit the raising of additional loans as it may deem appropriate to protect the interests of the creditors.

46. Matter of Reduction of Share Capital to be Indicated in Share

Certificate: In cases the share capital of a Company is reduced pursuant to this Act, the concerned Director shall indicate the matter in every share certificate and affix his/her signature thereto.

47. Prohibiting the Company from Purchasing its Own Shares: No

Company shall purchases its own shares or provide loans against the security of its own shares.

48. Notice on capital: A Public Company shall explicitly indicate the

number of Shares subscribed and the total amount actually collected thereon, in notices, advertisements etc. relating to capital which it is authorized to raise.

49. To Obtain Approval: (1) After the paying up of the entire amount of

the share undertaken to be subscribed by the Promoter, he shall have to make an application along with the evidence thereof, to the Office for the approval of the transactions,

(2) After the filing of an application pursuant to Sub-section (1), the Office shall grant approval for carrying out the transactions.

(3) Without obtaining the approval pursuant to Sub-section (2), no such acts as to publish the prospectus or create any type of liability, except but the matters such as meeting of the board of directors, management of the company, shall be carried out.

(4) Notwithstanding anything contained above in this Section, a Private Company may commence its transactions immediately upon receipt of the certificate of registration with the Office.

50. **Not to Sell Shares or Debentures on Discount:** A Company shall not sell its shares or debentures on discount.

51. **Preference Shares:** (1) A Company may issue preference shares subject to the privileges and restrictions as prescribed in this Act and Memorandum or the Articles.

(2) Except as provided in the Articles, a preferential share may not be changed into an ordinary share.

52. **Debenture May be Converted into Share:** A Debenture may be converted into a Share in accordance with the provisions made in the Memorandum or Articles or as per the decision made by the Board of Directors prior to the issuance of Debenture. In the event of conversion of a debenture into a share, information on that matter shall be given clearly through the Prospectus.

53. **Prohibition on Transaction of Securities** : (1) No Director, Managing Director, Auditor, person directly involved in the management and accounts of the Company and the Company Secretary of a Public Company shall, until he assumes Office in the company, purchase, sell, mortgage donate or cause or allow to be sold, mortgaged or donated the securities of the Company or the subsidiary Company of that company, in his/her name or in the name of his/her close relatives or of an association, organization, firm or Company controlled by him/her or his/her close relatives.

Provided that, in the event of issuance of new shares, the above-mentioned restriction shall not apply.

Explanation : For the purposes of this Sub-section "close relative" means husband, wife, son, daughter, father, mother, elder brother, younger brother, elder sister, younger sister, uncle, aunt,

mother-in-law, father-in-law, brother-in-law, sister-in-law, nephew, niece, maternal uncle, maternal aunt, nephew, niece of the concerned person.

(2) In case any person commits any act in contravention of Sub-section (1), the Company shall forfeit such securities.

(3) The Board of Directors may sell or dispose of the securities forfeited pursuant to Sub-section (1) in such a manner as it may deem proper.

Chapter- 5

Meetings of Company

54. General Meeting of a Company. (1) The General Meeting of a Company shall be of the following categories:

- (a) Annual General Meeting, and
- (b) Extra-ordinary General Meeting.

(2) The Shareholders shall be notified of the place, date and agenda of the meetings in advance of at least Twenty-One days in the case of an annual general meeting, and of Fifteen days in the case of an Extra-ordinary General Meeting of a Public Company; and notification thereof shall also be published at least twice in a newspaper of national level.

(3) No decision shall be taken in any General Meeting on any subject which has not been notified a forehand in accordance with Sub-section (2), except in the following circumstances:

- (a) Unless otherwise provided for in other Sections of this Act, if the Shareholders representing Sixty-

Seven per cent of the total Shareholders of the Company who are entitled to vote at the General Meeting, attend in person or by proxy and vote in favour of taking a decision on any particular subject, or

- (b) If the subject was already notified for discussion in any General Meeting which has been adjourned.

(2) Notwithstanding anything contained above in this Section, the general meeting of a Private Company and its procedures shall be as provided for in the Articles.

55. Directors to be Present in General Meeting: Each Director shall be present in the general meeting as far as possible.

56. Legality of Meeting : Before every General Meeting commences, the Shareholders present therein shall ascertain as to whether or not it has been convened in accordance with this Act and the Articles; and the meeting shall be deemed to have been duly convened even if any other law has not been observed in respect thereto, provided a notice has been sent to all the Directors pursuant to Sub-section (2) of Section 54 and the Meeting attended by the required quorum as referred to in Section 60 has agreed to hold it.

57. Circumstances in Which Attendance or Voting is Prohibited at Meeting: (1) No person shall be entitled to participate or vote in any General Meeting in the capacity of a shareholder either in person or by proxy on discussions 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 of his 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 wrongly by him/her or in respect of his/her own appointment, dismissal, transfer or confirmation, with respect to provision of, or reduction or increment in allowances or bonus or in respect of any agreement, contract or contraction regarding his employment or anything in which his/her interest or concern is involved.

(3) No Director or his/her partner or his/her proxy shall be entitled to vote in any discussion to be held at any General Meeting in respect of the appointment of auditors.

(4) No Shareholder who has not paid calls on the shares shall be entitled to attend and vote at any General Meeting.

58. Right to vote at general meeting: Only the person whose name is registered as a shareholder in the shareholders' register shall, subject to the provision of Section 57, be entitled to attend a General Meeting and cast vote at the rate of One vote for each share held by him/her.

Provided that;

- (1) If a Shareholder entitled to vote is unable to attend any meeting personally, he/she may nominate any shareholder of the same Company as his/hers proxy to vote on his behalf, by making an application signed by him/her as set out in the prescribed format, and the proxy so nominated may attend or vote at the meeting.
- (2) If a share is held jointly by more than one person, only the vote or letter of proxy casted or given by

the partner nominated by all such partners or by the proxy nominated by him/her under Clause (1), and in case no such partner is nominated accordingly, by the partner whose name is mentioned first out of such partners, in the serial order in the shareholder's register shall be held valid.

59. Right to Vote in Appointment of Director: (1) Except as otherwise provided for in the Articles, in voting for election of Director, each 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 votes are divided for more than one candidate as indicated by him/her.

(2) A body corporate entitled to appoint a Director pursuant to this Act or Articles shall not be entitled to vote in the election of Directors.

60. Quorum: (1) The quorum for the General Meeting of a Private Company shall be as provided for in the Articles.

(2) The proceedings of the meeting shall not be conducted unless seven Shareholders of the total Shareholders representing Sixty Seven per cent of the total number of shares of a Public Company are present either in person or by proxy.

Provided that, if a meeting cannot be held because of non-presence of the shareholder in that number, and another meeting is called by giving a notice of at least Seven days, nothing contained above shall prevent the holding of such a meeting if Seven Shareholders

representing Thirty per cent of the total number of shares are present either in person or by proxy.

61. Discussion and decision : (1) The General Meeting shall be presided over by the chairperson of the Board of Directors, and in his/her absence by the person nominated from amongst the attending Directors by a majority of the attending shareholders, in proportion to the shares of such shareholders.

(2) All the matters to be discussed at the General Meeting shall be presented in the form of resolution.

(3) On any subject voted upon, the opinion of the majority of the shares of the meeting shall be deemed to be the decision of that meeting. Such votes may be determined by voice, grouping of the Shareholders or ballot as well as the procedures prescribed by the Chairperson.

Provided that, in the case of a special resolution, the resolution shall be deemed to have been passed by the meeting only if the Shareholders representing Seventy-Five per cent of the Shareholders present at the meeting vote in favour of the resolution.

(4) If the votes are evenly divided at the meeting, the Chairperson may exercise the casting vote.

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

62. Minutes: (1) The Company shall have the minutes of every General Meeting recorded in a separate book and the minutes shall be signed by the Chairperson and by at least one Director and one shareholder appointed by that Meeting.

(2) While recording the minutes pursuant to Sub-section (1), all the matters, including the manner in which the notice of the meeting was issued, the number of the Shareholders present, the percentage of representation out of the total shares, the matters decided at the meeting, the result of the voting, if any, shall be set out in the minutes.

(3) The minutes set down pursuant to this Section shall be sent to the Office and to the Shareholders within Thirty days of the holding of General Meeting.

63. Annual General Meeting: (1) Every Public Company shall hold its first Annual General Meeting within One year from the date of approval to start its business, and thereafter it shall hold the Annual General Meeting every year within Six months from the expiry of its fiscal year.

(2) If the Company makes an application, setting out the reason for its failure to call the Annual General Meeting within the time-limit referred to in Sub-section (1), to the Office for the extension of the time-limit, the Office may extend the time-limit of up to Three months in maximum.

(3) If the Company fails to call its Annual General Meeting even within the time-limit referred to in Sub-section (2) an any shareholder makes an application setting out the matter, the Office may cause it to call the Annual General Meeting, and even if no such application is made, it shall cause such meeting to be held within two months of the expiry of the time-limit referred to in Sub-section (2).

64. Matters to be Presented and Discussed at the Annual General Meeting: (1) The Director shall have to present the audited annual account of the previous year at the Annual General Meeting of a Public Company.

(2) If the Shareholders representing at least five per cent of total votes so desires, he/she may, by submitting an application to the Directors prior the issue of a notice under Sub-section (2) of Section 54, 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 first General Meeting, a report setting out the following matters and signed by at least one Director shall have to be sent to each Shareholder:

- (a) Total number of the shares allotted,
- (b) Number of fully paid up and unpaid shares out of the allotted shares,
- (c) Total amount obtained from the sale of shares,
- (d) A statement of income and expenditure of the Company showing under different headings, including the income made by the Company from shares, debentures or other sources, expenses made from such income, remaining balance, account of preliminary expenditure of the Company, as of Thirty days before the sending of the report, and estimated expenditure to be incurred lateron;
- (e) Name, address and designation of Director, Manager, Company Secretary, employee dealing with account and Auditor as well as their appointment and terms of service,
- (f) Major things amendments to be made thereto.
- (g) Amounts due and payable by Directors,

- (h) Particular of an amount paid or to be paid for selling shares or carrying out any other act,
- (i) Other necessary matters.

(4) Discussions shall be held and decisions taken at the Annual General Meeting also on the matters such as the accounts of the company, balance sheet, profit and loss account, the report of Director and Auditor, the dividends to be divided among shareholders, appointment of Director and Auditor, remuneration of Auditor, etc. in addition to the matters presented pursuant to Sub-sections (1) and (2).

Provided that, in holding discussions on the profit to be divided among the shareholders, no decision shall be made in a manner that the rate of such profit is more than that fixed by the Board of Directors.

65. Preparation of Documents for the Annual General Meeting: The documents, resolutions and particulars to be discussed at the Annual General Meeting shall be prepared and kept ready at the registered Office of the Company at least Twenty One days before the holding of the meeting, and if any shareholder makes an application for duplicate copy thereof, he/she shall be supplied with a copy of the same.

66. Description to be Forwarded to the Office: (1) A Public Company shall within Seven days of the holding of the Annual General Meeting, forward the details indicating the number of Shareholders present at the meeting, a copy of the resolution, balance-sheet, profit and loss account, report of the Director and Auditor, and the decisions.

(2) Every Private Company shall forward a copy of the balance sheet and profit and loss account certified by the Auditor to the Office within Sixty days of completion of its fiscal year.

67. Extra-ordinary General Meeting: (1) The Board of Directors of a Public Company may convene an Extra-ordinary General Meeting, if deemed necessary.

Provided that, an Extra-ordinary General Meeting shall not be convened pending the first Annual General Meeting is held.

(2) In the course of examining the accounts of a public company, if it is deemed necessary to call convene Extra-ordinary General Meeting for any reason, the Auditor may request the Board of Directors to convene such meeting; and if the Board of Directors does not convene the meeting accordingly, the Auditor may submit an application to the Office setting out the matter; and if an application is made accordingly, the Office may convene an Extra-ordinary General Meeting of the Company.

(3) If the Shareholders holding at least Ten per cent shares of the paid-up capital of the Company or at least Twenty-Five per cent Shareholders of the total number of Shareholders make an application, setting out the reasons therefor, to the registered Office of the Company for the convening of an Extra-ordinary General Meeting, the Board of Directors shall have to convene an Extra-ordinary General Meeting of the Company. If the Board of Directors does not convene the Extra-ordinary General Meeting within Thirty days of making such application, the concerned Shareholders may file a complaint to the Office setting out the matter; and if such complaint is filed, the Office may cause to convene such a meeting.

(4) If the Office deems it necessary to convene an Extra-ordinary General Meeting in view of the findings of the inspection or investigation or for any other reason, the Office may itself convene or cause the Board of Directors to convene such a Meeting.

68. To Submit Special Resolution: Special resolutions shall be submitted to take decision at the General Meeting of a Company on the following matters.

- (a) Increasing the authorized capital,
- (b) Decreasing the share capital,
- (c) Conversion of the Company (from a private to a public and *vice versa*), (subject to Section 13),
- (d) Amalgamation of one Company into another Company,
- (e) Issuing of bonus share,
- (f) Changing name or main object of the Company.

Chapter – 6

Board of Directors

69. Directors to Provide Information: (1) A Director shall give information in writing of the following matters to the Company within Seven days of his/her assumption of Office as the Director:

- (a) In the event of his/her or any of his/her family member's director involvement in any type of sale or purchase or other type of contraction related with the transactions of the Company.

Explanation: For the purpose of this Clause, "direct involvement" means and includes the condition where he/she or a member of his/her

family is a promoter or a Director of a Company involved in such Company or private or partnership firm or such transaction, by holding more than Twenty Five per cent of the share thereof.

- (b) In the event of having any type of interest in the appointment of the Managing Director, Company Secretary, General Meeting.
- (c) In the event of being a Director of any Company.
- (d) In the event of having carried out the transactions of the shares, debentures or other securities of the Company or the subsidiary Company of such Company, on the matter of such transactions.

(2) While providing information pursuant to Sub-section (1), a written agreement, if any, concluded between the Director and his/her family member and in the absence of such an agreement, major and necessary matters related with the transactions or interest or involvement shall be set out.

(3) The Company shall give the information as referred to in Sub-section (1) to the Office within Seven days of the receipt of such information; and upon receipt of such information, the Office shall set down and maintain records in a separate register maintained for this purpose.

70. Board of Directors: (1) The appointment and number of Directors of a Private Company shall be as provided for in the Articles.

(2) There shall be a Board of Directors in a Public Company consisting of Three Directors in minimum and Eleven Directors in maximum.

(3) Any one Director selected by the Directors from amongst themselves shall be the Chairperson of the Board of Directors.

71. Appointment of Directors: (1) The Directors of a Public Company shall be appointed by the General Meeting of the company, subject to Section 73 and the provisions set forth in the Articles.

Provided that:

- (1) Pending the holding of the first Annual General Meeting of the company, the Directors shall be appointed by the promoters.
- (2) If there occurs any vacancy in the post of any Director prior to the holding of the Annual General Meeting, the Board of Directors may appoint a Director for remaining term.
- (3) In the case of a Company in which a body corporate has held shares, the body corporate may appoint Directors as well as alternate Directors in proportion to the value of such shares.

72. Shares Qualification of Directors: Any person, in order to be appointed as a Director of any company, shall have to hold such shares as may be prescribed in the Articles of that Company.

Provided that, any person who becomes a Director under proviso Clause (3) to Section 71 shall not be required to purchase such share.

73. Circumstances Where One is Disqualified to be Appointed to or Continue to Hold The Post of Directors: (1) Any of the following persons shall not be eligible to be appointed to the post of a 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 an insolvent,
- (d) Who has been convicted and sentenced to punishment by a court for theft, fraud or forgery or embezzlement or misuse of goods or funds entrusted to him in an authorized manner, and a period of One year has not elapsed thereafter,
- (e) Who has personal interest of any kind in any business or contract or agreement with the concerned company,
- (f) In the case of a shareholder, where it has been held that an amount is due to be paid by him to the Company pursuant to prevailing laws,
- (g) In the case of a person having been awarded punishment pursuant to Section 127, and pursuant to Section 128, a period of One year and of Six months, respectively, has not been elapsed from the date of award of the punishment.

(2) No person shall remain in the post of a Director in the following circumstances:

- (a) If one is not eligible to be appointed to the post of Director as set forth in sub- section (1),
- (b) If the General Meeting passes a resolution to remove from the post of Director,

- (c) If the resignation tendered by a Director is accepted,
- (d) If one is convicted by a court of any offence involving dishonesty or *mala fide* intention in the activities of the company,
- (e) If one commits such an act which is forbidden to be done by a Director under this Act.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), any person referred to in Clause (e) of Sub-section (1) may be eligible to be appointed or to continue to hold the post of Director if, after he/she has given full information on the agreement with the Company and his/her interest therein, the majority of Shareholders at the General Meeting decide that he/she has not any concern over such agreement and interest.

(4) Before holding any person to be disqualified for appointment to the post of Director or holding that post, the Company shall give a notice thereof to him and provide him with an opportunity to defend himself.

74. Tenure of Office of Directors: (1) The tenure of Office of a Director of a Private Company shall be as provided in the Articles.

(2) The term of Office of a Director of a Public Company shall be as set forth in the Articles, not exceeding Four years.

Provided that:

- (1) A Director appointed by His Majesty's Government or a corporate body shall hold Office so long as the appointing authority desires.

(2) A Director appointed pursuant to Clauses (1) and (2) of the proviso to Section 71 shall hold Office only until the holding of the Annual general Meeting.

(3) A Director appointed to the post of any Director fallen vacant in the meantime shall hold Office only for the remaining term of that Director whose post has so fallen vacant.

(3) Any Director who retires on the expiry of his/her term of Office shall be eligible for re-appointment as Director.

75. Remuneration, Allowances, Rewards etc. Of Directors: (1) The meeting allowances or monthly remuneration to be obtained by Directors for attending the meeting and daily and travelling allowances of directors while carrying out the business of the Company shall be as prescribed in the Articles.

(2) The General Meeting may grant reward in a sum not exceeding Five per cent of the net profit to the Directors so as to encourage them.

76. Powers and duties of Board of Directors: (1) Subject to this Act and the provisions of the Articles and the decisions of the General Meeting, the Board of Directors shall make arrangement of all the transactions of the Company, and exercise its powers and discharge its duties.

(2) Except in accordance with the decision of the General Meeting, no Director of any Public Company shall do anything yielding personal benefits to him/her through the Company.

Provided that, a Private Company may provide for such benefits to the Directors as provided for in the memorandum, Articles or unanimous agreement as it may deem proper.

(3) Except as otherwise provided in the memorandum and the Articles or the unanimous agreement, in 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 delegate to him/her individually or jointly any or all of its powers, *inter alias*, to make correspondence or to sign bills of exchange or cheques etc. on behalf of the Company.

(4) A Company shall not be responsible for any act and action done by any person acting in the capacity of its Director or representative beyond his/her jurisdiction.

(5) If any person enters into any transaction with a Director or with a representative referred to in Sub-section (3) knowingly or having reason to believe that the Director or the representative is dealing with any transaction for his/her personal interest or with the intent of 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.

77. Appointment of Managing Director, and Management of

Company: (1) The Directors may subject to the Articles appoint one Managing Director from amongst themselves.

(2) The functions, duties and powers of the managing director shall be as mentioned in the Articles or as prescribed by the Board of Director.

(3) The Board of Directors may assign the management of the Company to any person, organization or company, with term and condition that it may revoke such assignment at its pleasure.

78. Meeting of the Board of directors: (1) Meetings of the Board of directors of a Private Company shall be held as mentioned in the Articles.

(2) Meetings of the Board of Directors of a Public Company shall be held at least Six times in a year.

(3) The Directors shall have to be present personally at meetings of the Board of Directors of a Public Company. The Directors of a Public Company. The presence of the proxy of a Director instead of the Director 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 entitled to attend and vote at the meeting.

(5) The decision of the majority at a meeting of the Board of Directors shall be binding, and in the case of a tie, the Chairperson may exercise the casting vote.

(6) Minutes of the Directors present at the meeting of the Board of Director, the subject discussed and the decisions taken thereon shall be recorded in a separate in a separate book, and at least sixty per cent of the total Directors present at the Meeting shall sign the minutes.

Provided that, if any Director has put forward an opinion against such decision or he had a dissenting opinion in regard to the decision while discussing any matters, he/she may mention the same in the minutes.

(7) A decision shall not be deemed invalid only by virtue of its not being signed by any member.

(8) Notwithstanding anything contained in Sub-sections (3), (4), (5) and (6), except in cases expressly prohibited by the Memorandum or the Articles, if all the members of the Board of Directors or sub-committee consent in writing in regard to any function permitted to be done by the Board of Directors or any sub-committee of the Directors, such a function may be performed even without holding a meeting by enclosing such consent in the minutes.

(9) The consent referred to in Sub-section (8) shall be deemed as a decision of the meeting of the Board of Directors.

79. Validity of Action Already Done: If it is subsequently found out that any provision under this Act has not been observed in regard to the appointment of any Director, no acts and actions already done by such a Director, prior to such finding out shall be invalid merely for that reason.

80. Responsibility and Liability of Directors: (1) No Directors of a Company shall do any thing to derive personal benefits through the Company or in the course of the business of the Company.

(2) If any person has any personal interest in the transaction of the Company or in an agreement concluded with the company, after being appointed as a Director and prior to assuming the Office, the Director shall have to inform the Board of Directors thereof.

(3) If any Director is found to have derived any personal benefit in the course of transaction of the company, the Company shall recover such amount from such Director as a loan.

81. Register of Directors: Every Company shall have to record a brief introduction of its Directors in a separable register and forward a copy

thereof as well as a notice of alteration of Directors, if any, to the Office within Fifteen days.

Chapter-7

Accounts and Records of Company

82. Accounts of Company: (1) Every Company shall duly maintain its accounts in the Nepali language. For its convenience, a Company may maintain its accounts in the Nepali and in other language as well. In cases where accounts are maintained in the Nepali language shall be deemed to be authentic.

(2) The accounts to be maintained pursuant to Sub-section (1) shall be maintained in accordance with the generally accepted principles based on double entry book keeping system in such a manner as to clearly reflect the actual situation of the transactions of the Company.

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

(4) In the case of a public company, the balance of the Company other than the amount prescribed by the Board of Directors shall be deposited in a bank and transaction shall be done through the bank.

83. Preparation of Annual Account and Reports: (1) The following annual accounts shall have to 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 Sixty days of the expiry of its fiscal year:

- (a) Balance sheet up to the last date of the fiscal year.
- (b) Profit and loss account of the fiscal year.

(c) Description of cash flow of the fiscal year.

(2) The annual accounts referred to in Sub-section (1) shall have to be approved by the Board of Directors and audited.

(3) The report of the board of the Directors shall contain the following matters:

- (a) Review of the transactions of the previous year,
- (b) Impact caused on the transactions of the Company from national and international situation,
- (c) Achievement of the current year as of the date of the report and opinion of the Board of Directors regarding the future,
- (d) Industrial or professional relations,
- (e) Alterations in the Board of Directors and reasons therefor,
- (f) Major things to affect the transactions,
- (g) If there are any remarks in the audit report, their comments thereon, and
- (h) Percent recommended for distribution of profits.

(4) While preparing a profit and loss account for the purposes of Sub-section (1), in the case of the year of Company incorporation, the accounts from the date of its incorporation to the last day of the current fiscal year, and thereafter, in regard to other years, the accounts of the previous fiscal year shall also be contained therein.

(5) The annual accounts prepared pursuant to this Section shall have to be kept open for inspection by any Shareholder, if he/she so desires.

84. **Balance Sheet, and Profit and Loss Account:** Every Company shall prepare a balance sheet and a profit and loss account in a manner to clearly reflect its income and expenditure and the real and actual situation of its transaction. Such balance sheet and profit and loss account shall have to be prepared in the prescribed format.

Chapter-8

Audit

85. **Company to Appoint Auditor:** Every Company shall appoint an Auditor in accordance with this Act to have its accounts audited.

86. **Appointment of Auditor:** (1) The Auditor of the Company shall have to be appointed from amongst the Auditors holding certificates issued by the Department of Auditor General by the General Meeting in the case of a public company, and in the case of a private company, the company, as provided for in the Memorandum, Articles or unanimous agreement; and the name of the Auditor shall be forwarded to the Office within fifteen days from the date of such appointment.

Provided that, if an Auditor is to be appointed prior to the first General Meeting, the Board of Directors may appoint him.

(2) The Auditor appointed pursuant to Sub-section (1) shall hold Office only until the forthcoming annual General Meeting.

87. **Persons who Cannot be Appointed as Auditors:** The following persons or the firms or companies in which such persons are partners

shall not be eligible to be appointed as Auditor and shall not remain in Office even if already appointed:

- (a) Director, employee or worker of the Company,
- (b) Partner of a Director or employee of the Company,
- (c) Debtor of the company,
- (d) Close relatives of a Director of the Company or his partner,
- (e) A person who has been convicted of any charge pertaining to auditing,
- (f) A person who has become insolvent,
- (g) A person or Company having taken one cent or more than one per cent share of the company,
- (h) A person convicted of a criminal offence involving moral turpitude.

Explanation : For the purpose of this Section, "close relative" means husband, wife, son, daughter, father, mother, elder brother, younger brother, elder sister, younger sister, uncle, aunt, mother-in-law, father-in-law, brother-in-law, sister-in-law, nephew, niece, maternal uncle, maternal aunt, nephew, niece of the Director or Company Secretary.

88. Audit to be Invalid: The auditing done by a person having been appointed as an Auditor in contravention of this Act shall be invalid.

89. Failure to Appoint Auditor: If the Annual Meeting of a Public Company fails to appoint an Auditor or the Annual General Meeting can't be held or the Auditor appointed pursuant to this Act ceases to hold the Office due to any reason, the Office may appoint another Auditor at the request of the Company.

90. Accounts and Records to be Furnished: The books of accounts and the records of a Company shall at any time during Office hours on his/her demand be furnished to the Auditor for the purpose of audit and the concerned Director or employee shall also forthwith give verbal explanations on such matter as may be asked by him/her.

91. Functions and Duties of Auditor: (1) The Auditor shall submit a report, addressed to the authority having appointed him/her, to the Office and the company, certifying the books of accounts, records and balance sheet, statement of income and expenditure as well as cash flow report audited by him/her. A copy of this report, along with the notice of annual General Meeting, in the case of a public company, and as mentioned in the Articles or Unanimous Agreement in the case of a private company, shall be forwarded to each shareholder and the Office.

(2) The audit report shall also indicate the following:

(a) Whether necessary information and explanations have been made available or not to complete the auditing

(b) Whether the balance sheet, the profit and loss account and the statement of cash flow have been prepared in conformity with this Act or not, and whether the reports are in compliance with the accounts maintained by the Company or not.

(c) Whether the accounts and records have been properly maintained by the Company in accordance with the law or not.

(d) Whether, on the basis of the explanation and information made available in the course of

auditing and in the opinion of the Auditor, the balance sheet properly reflects the economic situation of the Company or not, and the statement of profit and loss of the fiscal year ending on the same date and the statement of cash flow properly reflect the profit and loss and cash flow of the company, respectively.

- (e) Whether the Board of Directors or any representative or any employee has acted contrary to law or committed misappropriation or caused loss or damage to the Company or not.
- (f) Suggestions, if any.

92. **Auditor to Certify**: The Auditor shall affix his signature on the books of accounts and the records audited by him/her, and also indicate the date on which he/she audited them.
93. **Requirement to Notify**: The Company shall send a copy of the report made by the Auditor to the shareholders. At the request in writing of the formal trade union serving in the enterprise, the Company shall provide one copy of such report to such formal trade union.
94. **Remuneration of Auditor**: The remuneration of the Auditor shall be as prescribed by the General Meeting, where he is appointed by the General Meeting and by the Office, where he is appointed by the Office, in a manner that it is to be borne by the Company.

Chapter-9

Demand for Explanations and Investigations

95. Power of the Office to Demand Explanations: (1) If it is necessary to have any unclear points in the documents submitted by the Company explained or to obtain explanations on any matter, the Office may require the Company to make explanations thereon within a reasonable time limit specified by it.

(2) The management of the Company shall, within the time-limit, send proper reply to the matter on which explanations have been sought under Sub-section (1).

(3) In the course of demanding explanations, the Office may, if it sees any irregularity in the business of a company, give necessary directive to the Company to regularize it, and it shall be the duty of the Company to obey such directive.

96. Power of the Office to Depute Inspectors: If Shareholders representing at least ten per cent of the paid up capital of the Company or at least one-fourth of a total number of Shareholders submit an application, together with supporting evidence and reasonable grounds, stating that any Company has acted in contravention of this Act, the memorandum, Articles, Prospectus, unanimous agreement or prevailing law, the Office may, as per necessity, depute one or more inspectors. Such inspectors shall be experts in any one subject out of the subject of accounts, law, commerce, industry and any subject relating to companies.

97. Office to Depute Inspectors on Its Own: Even if no application is submitted pursuant to Section 96, the Office may, as per necessity, appoint one or more qualified inspectors, to investigate the transactions or business of any Company if it is satisfied that there exist the following circumstances:

- (a) The business or transaction of the Company is being conducted to cheat its Shareholders or creditors or to commit fraud in any other manner or to fulfill an illegal end, or
- (b) Any Public Company has not furnished such information on its business as is required to be furnished.

98. Accounts and Records etc. To be Provided: The management of a Company shall have to provide such accounts, annual balance sheets, and other necessary documents as may be demanded by the Inspector deputed under Sections 96 and 97.

99. Submission of report: (1) The inspector shall, after completing his investigations, submit a report of his findings, along with his/her opinions, to the Office. The Office shall also send a copy of such report to the applicants. In the event of submission of an application by any shareholder for a duplicate copy of such report, the Office shall, upon receipt of the prescribed fees, give the duplicate copy thereof.

(2) If it seems from the report submitted by an inspector pursuant to Sub-section (1) that any Director, Managing Director, Manager, employee or any other person of any Company has deliberately caused any loss and damage to the Company or has cheated Shareholders or creditors or committed forgery or any illegal act, the registrar shall, notwithstanding anything contained in the prevailing law, order the Company to file complaints and suits on behalf of the Company.

Provided that, this provision shall not be deemed to have imposed a restriction on any other remedy available to the Company or shareholder under prevailing laws.

(3) If the registrar thinks that the Company may suffer a damage if the activity and business of the Company is left under responsibility of

the Director, managing Director, Manager, employee or the concerned persons against whom actions are the under Sub-section (2), he/she may give necessary directives to the Company to suspend such a Director, Managing Director, Manager, employee or person and operate its business.

100. Expenses of Investigations: (1) The expenses incurred in investigations conducted by the Office pursuant to Section 96 or 97 shall be borne by the Company itself.

Provided that, if, in the course of conducting investigation, any Director, managing Director, Manager or employee or the person appears to have improperly behaved or committed fraud or deception or cheating, such a Director, Managing Director, Manager, employee or person shall have to pay the expenses of investigations within Seven days of the completion of the investigation.

(2) If the concerned Director, Managing Director, manager, employee or person does not pay the expenses of investigations pursuant to the Proviso to Sub-section (1), the expenses shall be recovered as governmental dues.

Chapter-10

Liquidation of Company

101. Circumstances in Which the Office may Liquidate a Company:

(1) The Office, if it so deems proper, may order for liquidation of any Company in the following circumstances:

- (a) If an application is submitted to the Office for the liquidation of a Public Company after a General meeting of the Public Company has, by means of a special resolution, decided to liquidate it; or in the case of a Private Company if an application is made as provided in the memorandum, Articles, unanimous agreement or this Act,
- (b) If no meeting is convened or no report is submitted to the Office within the time-limit referred in this Act,
- (c) If an application is made to the Office by a creditor or creditors at least half of the debts of total existing debts of the Company to the effect since the Company has failed to pay off its debts even within One year of the expiry of the stipulated time of repayment of debts, the Company be liquidated and the amount of debts be realized in accordance with law,
- (d) If any bank or financial institution has sold or forfeited all the assets of the Company.

(2) Except as otherwise stipulated in this Act, a Company shall not carry on any transaction after the order is issued for the liquidation of the Company and all the powers of Directors shall, *ipso facto* be terminated from the date of issue of such an order.

102. Procedure of Liquidation of a Company: (1) The Company itself or its creditors may submit an application to the Office for the liquidation of the Company in any of the circumstances mentioned in Section 101.

(2) While submitted an application for the liquidation of the company, the creditors shall state the reasons why the Company should be liquidated and submit therewith such evidence as may be available in that respect.

(3) Except in cases where the Company itself applies for its liquidation, prior to issuing an order to liquidate the Company, the Company shall be required to submit a report, setting out reason, if any, why it should not be liquidated, within Fifteen days excluding the time required for journey.

(4) If the Office deems it proper, it may, prior to issuing an order to liquidate a company, hold a meeting under the chairpersonship of the Registrar and her the Directors of the Company, creditors of the Company and the applicants, orally.

(5) Any Director or applicant, who is not satisfied with an order to liquidate the Company issued pursuant to this Section, may file an appeal to the Court of Appeal within Thirty days of the issuance of such order.

103. Appointment and remuneration of Liquidator and auditor: (1) While issuing an order to liquidate a company, the Office shall appoint a

Liquidator to conduct the liquidation proceedings. He shall receive such remuneration as may be fixed by the Office.

(2) The Office shall appoint an Auditor to examine the accounts to be submitted by the Liquidator. The Auditor so appointed shall receive such remuneration as may be fixed by the Office.

104. To Take Custody of Assets of the Company: The Liquidator shall, as early as possible, take custody of all the books of account, records and all such assets to which the Company has or seems to have its title, and keep them under his/her custody and control.

105. Power of the Liquidator: (1) Except in cases where limited with any restriction imposed by the Office, General Meeting, or Articles or unanimous agreement of a private company, the Liquidator shall have the following powers:

(a) To file any law suit or institute any other legal action in the name of the Company or defend it on behalf of the Company;

(b) To perform only such part of the business of the Company as may be necessary to ensure that the Company is liquidated in as profitable manner as possible,

(c) To auction or sell all movable and immovable assets of the Company,

(d) To execute all types of documents, and issue receipts on behalf of the company, make call on shares not fully paid up, and settle all debts and liabilities of the Company,

- (e) To issue, approve or endorse promissory notes and bills of exchange on behalf of, and in the name of, the Company,
- (f) To raise funds to meet the expenses to be incurred in liquidation or, if necessary, owing to any other reasonable ground by mortgaging the assets of the Company, with the prior approval of the Office,
- (g) To settle the loans of the creditors or to compromise or make any other arrangement with those persons who make claim to be creditor,
- (h) To appoint necessary employees for his help and assistance,
- (i) To perform all such other acts as may be necessary to liquidate the company.

(2) The Liquidator may report to the Office for clearance on any specific matters arisen in the course of liquidation of the Company.

(3) The liquidator may require any employee of the Company to appear before him/her, to provide information on the incorporation, transaction, property or other matters of the Company and may inquire him.

106. Power to Convene Meeting of Creditors: (1) The Liquidator may, in order to know the intention of the creditors, convene their meeting and hold discussions with them.

(2) The Liquidator may prescribe a time-limit for the creditors to prove their claims and may prevent any creditors from receiving any share in any division until their claims are proved.

(3) The creditors who suffer from any act and action done by the Liquidator may an application to the Office.

107. To Maintain Accounts/Records Accurately: The Liquidator shall accurately maintain the minutes of the conferences or meetings convened by him/her, and if any creditor of the Company so desires, the liquidator shall allow him/her to see such minutes.

108. Liquidator to Submit Accounts: The Liquidator shall get the audited accounts of income received and expenditure made by him/her in the capacity of Liquidator and forward the same to the Office semi-annually.

109. Priority in Settlement of Liabilities: (1) While liquidating a company, the liabilities of the Company shall be settled in the following order of priority.

- (a) Expenses incurred in liquidating the company,
- (b) Salaries and wages, provident fund, gratuity and other amounts of the employees and workers,
- (c) Tax, charge, fee, royalty etc. payable to the Government or to any local autonomous body pursuant to the law,
- (d) Security loans obtained against the assets mortgaged, in the case of mortgage of property to the extent such mortgaged assets cover,
- (e) Other debts.

(2) Except in the case of those who have expired the time-limit referred to in Sub-section (2) of Section 106, no such debts shall be paid nor other liabilities fulfilled as are lower in the order of priority

unless the Liquidator is satisfied that those higher in the order of priority can be paid off or fulfilled from the assets of the Company.

(3) If any assets remain in possession of the Company after all debts and obligations are settled, priority shall be given to preference Shareholders, and the remaining assets upon paying off the amounts payable to them shall be divided among the other Shareholders in proportion to the shares held by them.

110. Requirement to give Notice of Fraud Against Company or

Creditors: If the Liquidator finds that any Director or employee has committed any deception or fraud against the Company or its creditors, he shall immediately notify the Office thereof giving particulars of the illegal acts and actions committed in that regard; and if the Office finds such information reasonable, it may order the Liquidator to take legal action against the person having committed such deception or fraud, in accordance with the law.

111. Voluntary Liquidation of Company: (1) A Public Company may go into voluntary liquidation by a special resolution of its General Meeting in the following circumstances.

- (a) If any period is prescribed in the articles of the Company for running it, and the period is expired, or
- (b) If it is decided to go into liquidation in view of the liabilities against the Company or for any other reason.

(2) While passing a resolution for liquidation pursuant to Sub-section (1), the General Meeting shall appoint one or more Liquidators

for the act of liquidation. The remuneration of the Liquidator so appointed shall be as prescribed by the General Meeting.

(3) The General Meeting shall also appoint one or more Auditors for the purpose of auditing the accounts of the Company under liquidation; and the remuneration of the Auditor so appointed shall be as prescribed by the General Meeting.

(4) A Private Company may be liquidated according to the procedures set forth in its Memorandum, Articles or Unanimous Agreement.

- 112. Proposal of Voluntary Liquidation:** If a Company passes a resolution for its voluntary liquidation, the Public Company shall have to publish a notice thereof in the newspaper of national level for Two times and also to give such notice to the Office within Seven days from the date of passing such resolution.
- 113. Not to Carry on Business:** Except as otherwise provided elsewhere in this Act, after a resolution is passed for its voluntary liquidation, the Company shall close all of its business except in so far as it is necessary to continue such business to insure its liquidation in a profitable manner.
- 114. Payment of Debts and Liabilities of the Company:** If the Liquidator is of the opinion that the Company may not be able to pay off in full the debts incurred by it even within One year from the date when the Company has gone into liquidation, he/she shall have to forthwith convene a meeting of the creditors of the Company and present the description of the assets and liabilities of the Company at the meeting.

- 115. To Make Application:** The Liquidator or any creditor may make an application to the Office for deciding any question arising in the course of the Liquidation proceedings. And if such application is made, the Office shall have to make a decision thereon within one month and give a notice thereof to the applicant within Three days of the decision. If any one is not satisfied with such a decision, he/she may file an appeal with the concerned Court of Appeal within Thirty days from the date of receiving information of the decision.
- 116. Where Liquidator Proceedings Are not Completed Within One Year:** If it is to taken more than one year to complete the Liquidation proceedings, the Liquidator shall have to convene a General Meeting of the Company at the end of the first year of the commencement of those proceedings, and within three months after the expiry of every fiscal year, and submit Liquidation proceedings carried out in the previous year as well as the accounts audited by the Auditor such General Meeting.
- 117. Description to be Submitted to the General Meeting:** After the Liquidation proceedings have been completed the liquidator shall have to prepare as description of proceedings relating to Liquidation, clearly setting out the manner in which the proceedings were settled; and after the accounts have been properly examined, he/she shall have to convene a General Meeting of the Company for the purpose of submitting such description and accounts thereto.
- 118. Dissolution of Company:** (1) On the full completion of the liquidation proceedings, the Liquidator shall submit a report along with the audited final accounts, to the Office; and the Office shall issue an order of liquidation if the accounts are held to be correct. The Company shall be deemed to have been liquidated on the date of issuance of such order.

(2) Upon the issuance of an order of liquidation referred to in Sub-section (1), the Office shall have to publish a notice thereof in the newspaper of national level.

119. Not to Affect the Powers of the Office: Only the matter of voluntary liquidation of Company shall not preclude the Office from issuing such order as it may deem necessary on the liquidation of the Company upon an application made by the creditors or otherwise.

NEPAL LAW COMMISSION

Chapter-11

Principal and Subsidiary Companies

120. Control over subsidiary Company: (1) A principal Company may control its subsidiary Company as follows:

- (a) By holding control over the composition of the Board of Directors.
- (b) By holding majority shares of another Company.
- (c) If any Company becomes a subsidiary Company of any other subsidiary company, the former Company shall also be subsidiary Company of the principal Company controlling the latter Company.

(2) If any Company becomes a subsidiary Company of any other subsidiary company, the former Company shall also be the subsidiary Company of the principal Company controlling the latter Company.

(3) Even though the share of a Company has been subscribed by the Principal Company or by any representative on behalf of the subsidiary Company thereof or any person nominated on behalf of the principal Company or its subsidiary Company exercises the powers to appoint Director of such company, the above-mentioned conditions shall be deemed to have been fulfilled.

Provided that, while determining a principal Company and a subsidiary company, the shares possessed in the following conditions shall not be recognized for this purpose:

- (1) In cases where any Company is entitled to exercise any powers or has obtained any shares by virtue of

taking any debenture or any trust deed issuing the debenture,

- (2) In cases where a Company providing loan has accepted the shares by way of security.

121. Documents to be enclosed: (1) Any principal Company shall have to enclose the following documents of the subsidiary Company in its balance sheet:

- (a) One copy of the annual accounts of the immediately expired fiscal year of the subsidiary Company and the report of its Board of Directors during that period.
- (b) Auditor's report.
- (c) Details of the investment of the principal Company in the subsidiary Company at the end of the fiscal year.
- (d) In cases where the fiscal year of the principal Company and that of the subsidiary Company be different, the matter of change, if any, in any manner, of the right of the principal Company over the subsidiary Company during such different periods.

(2) The details referred to in Clause (b) of Sub-section (1) shall also contain the net profit derived after deducting the loss suffered in the concerned fiscal 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 principal Company.

(3) In cases where the Board of Directors of the Principal Company fails to obtain the information mentioned in Clause (b) of Sub-section (1), and Sub-section (2) due to any reason, the balance-sheet of the principal Company shall contain a written report thereof.

(4) The details referred to in Clause (c) of Sub-section (1) shall also show the loans raised by mortgaging the immovable assets of the subsidiary Company or also the loans raised for any purpose other than fulfilling the current liability.

122. Prohibition of Investment in the Principal Company: The subsidiary Company shall not purchase the share or debenture of the principal Company or make investment in any other manner.

Chapter-12

Special Provisions on Private Company

123. Unanimous Agreement: (1) Except as otherwise provided in this Act, the following matters may be managed in a unanimous agreement of a private company:

- (a) Management, business and transaction of the Company,
- (b) Restriction on the transfer of shares,
- (c) Powers of one or more Shareholders to liquidate the Company owing to certain or any incidental event or voluntarily,
- (d) Division or use of voting right,
- (e) Terms of appointment of employees, workers or officials of the Company,

- (f) Matters as to who will be the officials or Directors of the Company or persons or chief Manager of the Company to bear the ultimate responsibility,
- (g) Payment of dividends or distribution of profits, and
- (h) Matters on the absence of Board of Directors.

(2) The Unanimous Agreement may be amended by unanimous consent in writing of the parties to the agreement.

(3) The Shareholders who, after the conclusion of the unanimous 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, gift,
- (b) Where the shares have been obtained in any other manner, with the knowledge of existence of such an agreement at the time of obtaining the Shares.

124. Power of Shareholders to Inspect Accounts: The Shareholders of a Private Company or their proxy may inspect the following documents or records related with the transactions of the Company during Office hours:

- (a) Minutes book of the Shareholders and Directors.
- (b) Annual details of transactions,
- (c) Share register, and
- (d) Accounts.

125. Details of Transactions: (1) The Shareholder of a Private Company may demand the Company for details of its transactions of any fiscal year.

(2) The details containing the profit and loss account and the balance sheet certified by the Director, Managing Director or Chief Officer carrying on the business of the Company shall have to be provided within Fifteen days of the demand of the details pursuant to Sub-section (1).

Chapter-13

Proceedings of Case and Punishments

126. 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 of the Office or a Director or any other officer or administrative officer or a shareholder or a creditor of the Company or any other concerned person.

Provided that, even if no complaint is received from any person, the board may institute proceedings and make decision in any case which falls under its jurisdiction.

(2) The powers to hear and settle cases relating to offences punishable pursuant to Section 127 and the matters whereon claimed amounts are to be recovered pursuant to Section 130 and such cases as are mentioned elsewhere in this Act to be tried and adjudged by the District Court shall vest in the concerned District Court and the power to hear and dispose the cases punishable with fines under Sections 128 and 129 shall vest in the Company Board.

Provided that, pending the composition of the Company Board, the Office shall have powers to hear and dispose such cases as are to be heard and disposed by the Company Board.

(3) In hearing the cases under this Act by the District Court, the Court shall follow the procedures referred to in the Summary Procedures Act, 2028 B.S. (1971 A.D.).

(4) An appeal may be filed to the concerned Court of Appeal within Thirty-Five days against an order issued or decision made by the District Court or the Office pursuant to Sub- section (2).

127. **Punishment With Fine of Upto Twenty Thousand Rupees or Imprisonment for a Term not Upto Two Years or Both:** The following persons who commit the following offence shall be punished with a fine of upto Twenty Thousand Rupees or imprisonment for a term of upto Two years, or both.

(a) If a Director or Managing Director or Manager or Company Secretary or employee of a Company has caused any loss or damage to the Company or any person by inserting false particulars in any concerned documents of the Company deliberately or recklessly or with *mala fide* intention, such a Director or Company Secretary or employee,

(b) If any Director or Managing Director or Manager or Company Secretary or employee of a Company fails to maintain or to cause to maintain accounts, or conceals or suppresses or damages the accounts, or records required to be maintained under this Act, deliberately or recklessly or with *mala fide* intention, with a motive of causing loss to the Company or to any person, such a person,

- (c) If the Auditor of a Company inserts false particulars in report in the course of carrying out his duty or omits necessary comments while auditing the accounts deliberately or recklessly or with *mala fide* intention, such an Auditor;
- (d) If the Liquidator deliberately or with *mala fide* intention, fails to convene the Meeting of the creditors, or makes payment of loans or liability contrary to the order of priority or fails to maintain such accounts and records required to be maintained under this Act or fails to take over accounts and documents required to be taken over under this Act, or maintains false accounts, or fails to submit any report required to be submitted or fails to hand over cash, in-kind goods or books to be handed over by him/her on the termination of his/her assignment, such a Liquidator,
- (e) If the Director, Liquidator or any employee fails to hand over the documents, accounts, cash, good in-kind in his/her charge on the termination of his/her Office or on receipt of the order to liquidate the company, to the successor or if the successor fails to take over them, such Director, Liquidator or employee who does not hand over or take over them,
- (f) If any person, issues the prospectus of a Company prior to its being approved by the Office, such a person,
- (g) The Director who does not maintain the accounts or documents required to be maintained under this Act,
- (h) The Director of the Company or the Company Secretary who carries out the transaction of the Shares contrary to this Act, and
- (i) The Director or the 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 personal use without the approval of the Board of Directors or the General Meeting or does not settle the advances according to the of the Company.

128. Punishment With Fine of Upto Ten Thousand Rupees: The following person committing the following offence shall be punished with a fine of upto Ten Thousand Rupees:

- (a) If any person allots shares in contravention of the provisions of this Act, such a person who does so;
- (b) If a Company purchases, out of the company's capital in stock, its own shares or the shares of its principal Company contrary to this Act, or makes investment in contravention of this act, each Director of that Company,
- (c) If one carries out an act beyond the jurisdiction of the Board of Directors or beyond the working scope of the company, the person who carries out or orders to carry out that act,
- (d) If there is not convened a General Meeting required to be convened under this Act, or the documents to be made available to Shareholders before the convening of the General Meeting are not prepared or the documents required to be submitted at the General Meeting are not submitted, the person who has the duty to prepare, submit or do the same,
- (e) If the accounts are not shown or given to the Auditor as and when he/she so demands, the person who has the duty to show or give the same,
- (f) The Auditor who fails to submit the report as referred to in this Act,

- (g) The Director or employee who doesn't provide such information to the Office as required to be provided under this Act.

129. Punishment With Fine of Upto Five Thousand Rupees: Except in matters provided for in Sections 127 and 128, a fine of upto Five Thousand Rupees shall be imposed upon the Company or every concerned Director, manager or employee of the Company who fails to perform any act, which he is required to perform under this Act, or commits any act prohibited by this Act, or fails to perform his/her duty or to perform even any permissible act upon the expiry of the time-limit or without following the procedures.

130. Realization of Amount of Loss: If any person causes any loss to the Company or shareholder or creditor or any other person by committing an offence punishable under this Act or by deliberately violating any provisions contained in this Act or Memorandum or Articles or unanimous agreement, such person shall have to bear even the amount of such loss from his/her household (personal) property.

131. Prohibition on Discrimination Against Shareholder: (1) A shareholder of any Company may file an application in the District Court for remedy in cases where the activities of the Company are being or are going to be carried out against his interests, or any act to be done is not done or vice versa.

(2) The Shareholder filing an application pursuant to Sub-section (1) shall have to prove that the Director, Managing Director, manager, employee or any person controlling the Company is unduly discriminating or is about to discriminate with ulterior motive, in contravention of the Memorandum or Articles or unanimous agreement.

(3) If the District Court considers that the matters mentioned in the application referred to in Sub-section (1) are reasonable and

satisfactory, it may issue order to the Company to provide remedy deemed reasonable by it to the applicant or to all the Shareholders mentioned by the applicant in the application.

(4) In making an order for remedy pursuant to Sub-section (3), the Court may, without prejudice to the generality of the said Sub-section, and notwithstanding anything contained in the Memorandum, Articles or unanimous agreement, issue the following orders as well :

- (a) To duly operate the business of the Company in the future,
- (b) To stop any act being done or is to be done by the Company or require the Company to do any act which the Company has not done or is not to do,
- (c) To cause to institute civil suit by the persons directed by the court against any person, on behalf of and in the name of the company,
- (d) To require to decrease the capital by following the procedures set forth in this Act, and re-purchase the share of any Shareholder,
- (e) To make available the real loss suffered by any shareholder due to any discrimination done against him, from the Company or the persons having done such discrimination,
- (f) To order to liquidate the Company.

(5) Notwithstanding anything contained in Sub-sections (1) and (2), the remedy of the person who has suffered loss or damage owing to the fact that any thing required or not required to be done by the

Company or Director or the person controlling the Company or any of its employees has not done any thing required to be done or has done any thing not required to be done or that or that discriminatory treatment has been done to him shall not be limited only to this Section, and he/she may institute proceedings individually or collectively with other Shareholders like him/her for remedy available under this Act or other prevailing law.

(6) Where collective remedy has been demanded pursuant to this Section, it shall not be required to hear the Shareholders except in cases where the court has heard any or all of the Shareholders of such category as the court deemed necessary.

132. Shareholder May File Case on Behalf of Company: (1) In order to enforce any power or interests of the Company, the Company shall have to institute a case against any of its Directors, employees or the Shareholders controlling the Company pursuant to the unanimous agreement or any person, or if the concerned Company does not institute the case, any shareholder having subscribed two and half percent or more of the shares of the Company may individually or collectively with more than one shareholder whose share subscription reaches 5 per cent or the shares may, on behalf of the company, institute a case in the District Court against such Director or employee or the person controlling the Company or any other person.

(2) In filing a case pursuant to Sub-section (1), it shall be mentioned therein the matters as to what efforts have been made by them so that the Board of directors of the Company or the Shareholders controlling the Company pursuant to the Unanimous Agreement could themselves institute the case.

(3) Upon the filing of the case pursuant to Sub-section (1), the District Court may, upon deciding as to whether it would be proper to

get the case run by the Shareholders themselves or to get it confirmed (*Sakar*) by the company, order the Company to confirm the case, if the court deems it proper to get the case confirmed by the Company.

(4) The case filed under Sub-section (1) shall not be subject to compromise once it is filed, except in cases of dismissal, cancellation or inclusion of such terms as may be deemed appropriate by the court.

(5) If, while making judgment in the case filed pursuant to Sub-section (1) the claim of the plaintiff shareholder is held to be established, the legal expenses incurred by them in the course of instituting such case or the fee paid to the legal practitioner shall be got recovered from the Company to them. If the claim is not held to be established, such amount out of the expenses to be borne by the defendant to defend the case as deemed appropriate by the court shall be got reimbursed to the defendant.

Chapter-14

Miscellaneous

133. Outgoing Person to hand Over documents to Successor: (1) Any Director or any other official or employee of the Company shall, on the expiry of his /her term of office, hand over the documents in his/her charge to the official or employee who is appointed to replace him/hr to perform his/her functions, within Thirty days from the date of such expiry; and if such out-going person hands over such documents, the successor shall take charge there of accordingly.

134. Provision Concerning Company Board: (1) In order to deal with the cases referred to in Sub-section (2) of Section 126 to be heard and settled by the Company Board and to render advice to His Majesty's Government on the Company administration as per necessity, His

Majesty's Government may, upon a Notification published in the Nepal Gazette, constitute a Company Board consisting of three members, each one from the legal, commerce and business sector, who have worked in the concerned sector for at least Ten years and gained expertise.

(2) While constituting the Company Board by His Majesty's government upon a Notification published in the Nepal Gazette pursuant to Sub-section (1), in the Notification it shall designate any One of the Three members of the Board also to act as its chairperson.

(3) The Company Board shall, while hearing and settling the cases to be heard by it pursuant to this Act, exercise its jurisdiction as follows:

- (a) All the Three members shall jointly exercise their jurisdiction.

Provided that, where the Chairperson and another other member are present, the case may be heard any settled, and where 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 the three members or the majority opinion of the two members shall be deemed to be the decision of the Company Board.

- (c) In the event of the presence of only two members, where the Two members have the unanimous opinion, that opinion, being the majority opinion, shall be the decision of the Company Board.

- (d) If Two members are present and they lack unanimity in opinion, the opinion of the chairperson if the chairperson as well is present, and where other members except the Chairperson are present, the opinion of the senior member, shall prevail in the case of procedures. In the case of decision or final order, it shall be submitted to the member who was absent first and the opinion supported by him/her shall be deemed to be the decision of the Company Board.
- (e) If all Three members are present and each one has different opinion, the opinion of the Chairperson shall prevail in the case of procedures, and in the case of the decision or final order a reference shall be made to the court hearing appeal.
- (f) Clause (e) shall apply even in cases where majority failed to be existed even after it has been submitted pursuant to Clause (d) to the member who was absence first.

(4) The Company Board may, considering the workload of cases to be heard by it, locate itself in any other place in the Kingdom of Nepal for any specific period and hear and settle the cases.

(5) The Company Board shall follow the procedures referred to in the Summary Procedure Act, 2028 B.S. (1971 A.D.) while hearing and settling the cases to be heard by it.

(6) The Party who is not satisfied with a decision of the Company Board on any case may file an appeal to the concerned Court of Appeal within Thirty-Five days of making the decision.

135. Amalgamation of Company: (1) A Public Company which is to amalgamate into another Company may, by passing a special resolution at its General Meeting, amalgamate into another Company with subject to Sub-section (3).

Provided that, in the case of a private company, it shall be as provided in its Memorandum, Articles and unanimous 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 merge is passed pursuant to Sub-section (1), such Company shall file an application setting out the following matters for approval within Thirty days of the matter of such merge of such amalgamation:

- (a) In the case of a Public Company, a copy of the decision of the General Meeting referred to in Sub-section (1), and in the case of a Private Company, extracts of the concerned provision of the Memorandum, Articles or Unanimous Agreement that authorizes to amalgamate.
- (b) Final balance sheet and auditor's report of the Company to be amalgamated.
- (c) Copy of the written consent letter of the creditors of the Company to be merged and of the Company which amalgamates.
- (d) Valuation of the movable and immovable property of, and actual details of the property and liability of, the Company to be amalgamated.

- (e) If the Company which is to be merged and which merges have made a decision as to the creditors and employees and workers of the Company to be amalgamated, such decision.

Provided that, in making such decision, no decision shall be made to be prejudicial to the conditions of the service of the employees or workers.

(4) After the notice referred to in Sub-section (3) is received by the Office, it shall have to inform its decision within Three months after making an inquiry thereinto.

(5) After an approval for amalgamation has been received, all the property and liabilities of the Company to be merged shall be deemed to have devolved on the Company that has been amalgamated.

(6) The Office shall have to maintain records of the Company that has been amalgamated in the Company registration book.

(7) Except as otherwise provided for in the Memorandum, Articles of the Company or the Unanimous Agreement, a Shareholder who does not express his/her consent in writing to the amalgamation, merge or alteration in, or transfer of share of the Company or the sale of entire assets of the Company shall be entitled to get the company's assets valuated prior to such amalgamation, merge or alteration or transfer of the share or the sale of assets and get return of the amount in proportion to his/her share from the Company to be merged.

136. Power to Issue Direction : If the Office receives information that a Director or employee or official of a Public Company has not done or is not going to do any act required to be done as per this Act or Articles or

Memorandum of the Company or the unanimous agreement in the case of a private company, or has committed or is going to commit an act in contravention of this Act or the Articles of the company, the Office may, by making or causing to make an inquiry into the matter, issue necessary direction to the concerned Director, employee or official to do or cause to do any act required to be done accordingly or to prevent the commission of any prohibited act; and it shall be the duty of the person receiving such direction to comply with such direction.

137. Bonus Share: (1) The Company shall have to inform the Office before issuing bonus shares.

(2) Such bonus shares may be issued under Sub-section (2) only as per the special resolution passed by the General Meeting.

138. Action Taken in Contravention of This Act or The Articles to be Invalid: Except as otherwise provided for in this Act or the Articles or otherwise implied with reference to the subject or context, in cases where any act required to be done under this Act or the Articles has not been done or any prohibited act has been done by any Company or in respect of any Company, such act shall be invalid.

139. Notice Regarding Business of the Company: (1) In case where any notice is required to be given pursuant to this Act, Memorandum, articles, and the recipient of the notice expresses, before or after the mentioned time, in writing that the notice is not necessary, the notice shall be deemed to have been received.

(2) If any shareholder is present at any meeting, he/she shall be deemed to have given up his/her right to notice to be given to him pursuant to this Act or Memorandum of Articles.

140. Dividend: (1) Except in the following circumstances, the dividends shall be distributed to the Shareholders within Forty Five days of the decision made to provide the dividends:

- (a) If any law prohibits the distribution of dividends,
- (b) If the right to receive dividends is subject to any dispute,
- (c) If, without the fault on the part of the company, the dividends cannot be distributed within the above-mentioned time-limit due to any act of Gods.

(2) If the dividends be not distributed within the time limit set forth in Sub-section (1), the dividends shall be distributed by adding the interest thereto at the rate as prescribed.

(3) In declaring the dividends, the person whose name is maintained in the shareholder registration book at the moment shall be entitled to such dividends.

141. Office of The Company: (1) Each Company shall keep a signboard containing its name and address in the Nepali language at as conspicuous place outside of its registered office.

(2) Each Company shall have to register its registered address in the Office.

(3) A Company shall, prior to changing its registered address, inform the Office, and a Public Company shall also publish its address in the newspaper of national level.

142. Appointment of the Company Secretary: A Public Company which has issued capital of Ten Million Rupees or more than that shall have to

appoint to the post of the Company secretary a Nepalese citizen who has done at least Bachelor Degree in Law, Management or Commerce and done professional work for up to Five years.

143. 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 concerned bodies and to submit the details, documents, decisions etc. Required to be submitted by the Company to the Office or any other body pursuant to this Act or the prevailing law in due course of time.

(2) Subject to this Act, the Memorandum and Articles the Company Secretary may carry out the following functions:

- (a) To convene the Board of Directors and the General Meeting.
- (b) To prepare the agenda to be discussed at the Board of Directors and 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 Board of Directors and the General Meeting.
- (d) To send the notice of the allocation of shares and the calls on the shares according to the decision of the Board of Directors.
- (e) To accurately and properly maintain, take charge of, and Authenticate the Shareholder registration book and the records of the Shareholders and Debentureholders.

- (f) To refer the matter to the Board of directors or the Managing Director to indicate to pledge or mortgage, transferal or transmission of the shares or debentures.
- (g) In cases where a claim, Complaint, grievance, suggestion, advice etc. has been submitted by the Shareholders or Debentureholders in writing, to transmit such matter to the Board of Directors or the Managing Director or the Office or other bodies and to inform in writing the concerned Shareholders or Debentureholders of the results of the acts and actions done and taken in regard thereto.

(3) Except as per the decision of the General Meeting, the Company Secretary shall neither do nor cause to be done any such act with or through the Company as is to yield benefits to himself.

144. Repeal and saving: (1) The Companies Act, 2021 B.S. (1964 A.D.) is, hereby, repealed.

(2) This Act shall also apply to the companies registered in the records of the Office prior to the commencement of this Act.

Provided that,

- (a) No provision of this Act shall be deemed to be prejudicial to the mutual powers and rights of the Directors or any other Officers or Shareholders of that Company with Company; and such powers and rights shall have in existence as such.

- (b) The functions, duties, powers and liabilities of the Director or any other official or shareholder of such Company in respect of any act which was done or required to be done prior to the commencement of this Act shall be determined under the Companies Act, 2021 B.S. (1964 A.D.) and other laws prevailing for the time being.

NEPAL LAW COMMISSION