

Preamble :

Whereas it is expedient to enact legislation relating to companies in keeping with the existing circumstances, How therefore, His Majesty Ying Mahendra Bir Bikram Shah Dev has enacted this law on the advice and with the approval of the National Panchayat.

Chapter 1

Preliminary

1. Short Title, Extent and Commencement

- (1) This law may be called the Company Act, 1964.
- (2) It shall be enforced throughout the Kingdom of Nepal.
- (3) It shall come into force at once.

2. Definitions

Unless repugnant to the subject or context, in this act,

- (a) Company means a limited company incorporated under this act.
- (b) Private Company means a company incorporated under this act, which limits the member of its shareholders to fifty, is prohibited from issuing public invitations to subscribe to its shares and debentures, and is subject to restrictions on the sale or nortgage of its shares or debentures to persons other than shareholders without the approval of the Board of Directors.
- (c) Public Company means a company other than a private company.
- (d) Subsidiary Company means a company under the control of the parent company, which has... subscribed to more than fifty percent of its shares.
- (e) Foreign Companies means companies incorporated in foreign countries.

(f) Share means a division of the share capital, as well as stock.

(f1) Bonus Shares mean shares issued to shareholders in the form of additional shares by capitalizing the surplus or reserve funds of the company; the term includes an increase in the paid-up value of shares through such capitalization.

(g) Preference Shares mean shares having preference over ordinary shares.

(h) Ordinary Shares means shares entitled to dividends from profits left after paying dividends to preference shareholders.

(i) Memorandum means the memorandum of association of company.

(j) Articles mean the articles of association of a company.

(k) Prospectus means a prospectus to be published by a company under this act.

(l) Shareholder means an owner of shares.

(m) Debenture means the bonds issued by the company under this act with its assets as collateral.

(n) Share Certificate means a certificate issued by the company to the person who has purchased its shares.

(o) Share Underwriter means one who has undertaken to sell shares and to purchase all unsold shares.

(p) Special Resolution means a resolution passed as a special resolution under this act.

(q) Director means a director appointed under this act. The term includes an alternate director.

(q1) Managing Director means the Managing Director appointed according to Section 69A.

(q2) Company Secretary means the Company Secretary appointed according to Section 69B.

(r) Managing Agent means a managing agent appointed under this act.

(r1) Security means the shares, bonds, debentures, loan bonds issued by a company; the term includes receipts relating to deposits for securities, an rights and letter of authority relating to securities.

(s) Concerned Department means the Department of industry of His Majesty's Government, or any other department or office prescribed by it.

3. Incorporation of Company

(1) Persons desirous of undertaking any economic enterprise on the basis of limited liability after raising capital by issuing shares for this purpose shall incorporate a company under this act.

(2) No company shall be incorporated unless the minimum number of promoters is three in the case of a private company, and seven in the case of a public company.

(3) No company shall be incorporated unless thirty percent of its issued capital has been subscribed. In case a company is incorporated subject to the provision that shares will be subscribed in this way, and in case the stipulated shares are not taken up within three months from the date thereof, its incorporation shall ipso facto be null and void.

(4) No new company shall be incorporated with a name similar to that of a company which has already been registered.

(5) In case the concerned department deems any proposed name inappropriate or undesirable, it may refuse to permit a company to be incorporated under such name.

(6) Unless otherwise provided for in this act, the liability of the promoter or shareholder of any company in respect to its business or functions shall be limited to the maximum amount of shares which he has pledged to subscribe.

(7) The word "limited" shall be added to the name of a public company, and the words "private limited" to the name of a private company, incorporated under this act.

(8) No concern not incorporated as a limited company under this act shall use the word "limited" after its name.

4. Application for Incorporation of Company

An application signed by at least three persons in the case of a private company, and seven persons in the case of a public company, shall be submitted to the concerned department for incorporation of a company under this act. The memorandum and articles of the company... shall be submitted along with the application.

5. Registration of Company

(1) In case an application for incorporation of a company is filed under Section 4, the concerned department shall institute necessary inquiries and then register the company subject to the provisions of current Nepal law, inform the promoters of the company accordingly, and issue a certificate thereof.

(2) The company shall be regarded as having been incorporated after it is registered under Sub-Section. (1), and its entire business shall then be conducted under the name so registered.

6. Registration Fees

Fees for registration of companies shall be as prescribed by the concerned department by notification in the

Nepal Rajapartra from time to time.

7. Company to be Like an Individual

- (1) The company established under this act shall be a corporate body with perpetual succession. It shall have a separate seal of its own for purposes of its business.
- (2) The company may self, mortgage, donate, or accept as donation, movable and immovable assets like an individual, and it may sue or be sued in its name.

7A. Prohibition to Open Partnership or Private Firms

A. company shall not open partnership or private firms.

8. Serving of Notices, Time-Limits, Etc., to Company

In case it is required to serve any notice, time-limit, etc. to the company, or to its employees, this may be delivered at its registered office, or dispatched by registered post.

9. Memorandum

- (1) The memorandum shall contain the following particulars:
 - (a) Full name of the company,
 - (b) Address of the head office of the company,
 - (c) Objects of the company,
 - (c1) Functions to be performed for fulfilling the objects of the company.
 - (d) Amount of authorised capital which is proposed to be raised, and the number and denominations of shares of different categories, and
 - (e) A statement to the effect that the liability of the share holders limited, so that they are not personally liable for any liabilities of the company except to the extent of the value of the shares held by them,
 - (f) Restrictions, if any, on the purchase or transfer of shares,
 - (g) Other necessary particulars.

(2) In case there exists any agreement providing for the following matters, the memorandum shall, in addition to the particulars mentioned in Sub-Section (1), also indicate the existence of such agreement and the provisions contained there in;

(a) Purchase of or claim over shares by a promoter signing the memorandum, or by any other person, for any consideration other than payment in cash, or

(b) Acquisition of any property in any manner by the company from any promoter signing the memorandum, or from any other person during the preliminary stage of the company, or

(c) Liability of the company itself for expenses incurred in its establishment, or

(d) Conferment of any special facility or privilege by the company to any promoter signing the memorandum, or to any other person.

10. Signatures to be Affixed in Memorandum

(1) The memorandum shall contain the full names and addresses of the individuals who have undertaken to purchase shares. It shall indicate the number of shares which each of them has undertaken to purchase, and shall be signed by each of them.

(2) The signature of every promoter signing the memorandum shall be attested by at least one witness.

(3) No person who is connected with the company to which the memorandum belongs shall be made a witness.

(4) No promoter shall sign the memorandum unless he has purchased a minimum of 25 (twenty-five) shares.

11. Articles of the Company

For the purpose of properly regulating its business, every company shall frame articles in such a way that they do not conflict with this act. The articles shall contain also the particulars indicated in Section 12. Such articles shall come into force after they are approved by the appropriate department.

12. Matters to be Indicated in Articles

The articles shall contain the following matters, and shall have been signed by the promoters signing the memorandum :

(a) Particulars indicated in Section 9.

(b) Appointment and term of director.

(b1) Functions, duties and powers of the Managing Director.

(c) Time for convening the annual general meeting.

(d) Matters relating to the procedure of the company's meetings, notice of meeting, etc.

(d1) Privileges of preference shareholders, and

(e) Other necessary matters.

13. Alteration in Memorandum or Articles

In case it is required to effect alternations in the memorandum or articles, this shall be done through a special resolution at a general meeting with the approval of the appropriate department by explicitly mentioning the impact of sue alteration on the scope of business and financial results of the company. Provided that in case it is required to effect any alterations in the particulars contained in any agreement indicated in Sub-Section (2) of Section 9, this may be done with the approval of the general meeting and the concerned department.

14. Memorandum and Articles to be Printed

Every public company shall print and publish its memorandum and articles.

15. Publications of Prospectus

(1) Before inviting the public to purchase its shares or debentures, every public company shall print and publish a prospectus in accordance with this act. provided that before publishing the prospectus, the directors shall submit a copy thereof, duly signed by them, to the appropriate department for approval, and shall publish it only after obtaining such approval.

(2) The first page of every prospectus to be published under Sub-Section (1) Shall state the fact that a copy thereof has been registered at the appropriate department, and the prospectus has been approved by that department, as well as the date when this was done.

16. Particulars to be Indicated in Prospectus

The prospectus shall contain the following particulars :

(a) The objects or the company and other main particulars given in the memorandum and articles.

- (b) The number of shares to be subscribed by the directors, and the salaries, allowances, or remunerations prescribed for them.
- (c) Shares or cash received or to be received as remuneration by the promoters of the company.
- (c1) Any arrangement of contract for reservation of shares for share-holders, employees, or any other person.
- (d) The number of shares to be sold to the public.
- (d2) Reasons and justification for adding premium if the shares are to be sold by adding premium to the value of the shares.
- (d3) Arrangements relating to participation in the Board of Directors by shareholders who take up shares distributed among the public.
- (e) The minimum number of shares which must be sold prior to allotment, and the advance payment to be made on each share along with the application.
- (f) Reasons for obtaining loans in the form of debentures, the number of partly or fully paid-up debentures, and the total amount of out-standing loans.
- (g) Assets purchased with the proceeds of the sale of shares, the name of the person selling them, and particulars of arrangements, if any, made for payment in the form of shares or debentures instead of in cash.
- (h) Brokerage on shares and debentures.
- (i) Estimates of the expenditure required for the business of the company and of the income of the company.
- (j) Financial arrangements of the company.
- (k) Names and Addresses of suitors, and audit reports, if any.
- (l) Particulars as to whether any amount belonging to the promoters or directors is involved in assets purchased or to be purchased by the company, and whether such promoters or directors are partners in any other firm, or are connected with any other company.
- (m) The time when notices in respect to allotment of shares are to be published.
- (m1) Particulars of preliminary expenses incurred for establishment in the case of new companies, and an accurate outline of the latest balance sheet, in the case of companies already under operation

(n) The time and place of inspecting the balance sheet and the profit and loss accounts of the company, and the agreements mentioned in Sub-Section (2) of Section.

(o) Fees for underwriting shares, and

(o1) Arrangements for the sale or purchase of securities.

(p) Other necessary particulars.

17. Rights and Liabilities Under the Act not to be Affected by Anything

Mentioned in the Prospectus

Nothing contained in the prospectus shall affect the rights and liabilities of any person under this act.

18. Responsibility for Particulars Contained in the Prospectus

The responsibility for particulars mentioned in the prospectus shall vest in the promoters and directors who sign it. In case any person sustains any loss or damage as a result of his purchasing shares or debentures, believing in a prospectus in which false particulars are inserted deliberately or with mollified intentions, liability to pay compensation for such loss or damage shall be borne by the promoters or directors as mentioned above.

Provided that in case any promoter or director has resigned before the publication of the prospectus, or after having come to know about the false particulars contained therein, and publishes a notice

to this effect for the information of the public prior to the sale or allotment of shares or debentures, he shall not be liable for such loss or damage.

19. Issue of Duplicate Copies

In case any shareholder or any other concerned person demands a copy or printed duplicate of the memorandum, the articles or the prospectus, it shall be provided to him on payment of a fee of one rupee.

Chapter 2 Shares and Debentures

20. Application for Shares

- (1) Persons desirous of purchasing the shares of a company shall submit an application according to the specimen form No. 1 indicated in Schedule 1.
- (2) The application shall be accompanied by an advance of at least ten percent of the value of the shares applied for preelse it shall be rejected.

21. Allotment of Shares

- (1) Shares shall be allotted within a period of six months after the registration of the company in such a manner that all applicants as far as possible receive shares and a notice in respect thereto shall then be sent to shareholders according to the specimen form No. 2 indicated in Schedule 1.

Provided that such allotment shall not be made until fifty percent of the issued share capital as mentioned in the memorandum is subscribed.

- (2) In case allotment cannot be made within a period of six months from the date of the registration of the company for reasons indicated in the restrictive clause of Sub-Section (1), and in case the promoters submit an application explaining the reasons for the non-allotment of shares within seven days on the expiry of this time-limit, the appropriate department may extend the time-limit by six months, if it so considers proper.

- (3) In case allotment is not possible even within the time-limit extended by the appropriate department under Sub-Section (2), the amount accruing from the sale of shares shall be refunded to the shareholders who have paid installments thereon, along with interest at ten percent per year within thirty-five days after the expiry of the time-limit so extended, and where no time-limit has been extended by the appropriate department, within thirty-five days after the expiry of the original six months. The shortfall, if any, shall be personally met by the promoters.

- (4) In case an application is received for extension of time-limit under Sub-Section (2), the appropriate department shall issue sanction within fifteen days.

22. Particulars of Shares to be Submitted to the Appropriate Department

- (1) Particulars relating to the number of allotted shares, the total value thereof, the names and addresses of shareholders, and the amount collected as well as due on each share, shall be submitted to the appropriate department within thirty-five days after the allotment of shares.

- (2) In case shares are issued or sold for any consideration other than cash, a copy of the agreement concluded in respect thereto shall also be duly submitted to the appropriate department.

23. Brokerage

Any person who places or sells shares may be paid brokerage at rates not exceeding those prescribed in the articles of the company from the amount paid on shares placed or sold by him, and the brokerage so paid shall be indicated in the balance sheet.

23A. Underwriting of Shares

No one, with the exception of financial institutions or institutions authorised to deal in securities, may underwrite shares without the approval of the appropriate department.

24. Share Certificates

(1) A share certificate according to the specimen from No. 5 indicated in Schedule 1 shall be issued to each shareholder for each share purchased by him. The certificate shall indicate the name of the company, the value of the shares, and the date of issue, and shall bear the signature of at least two directors and the seal of the company. In case the shares are partly paid up, the front side of the certificate shall explicitly indicate the amount which has been paid up and the balance due on such shares.

(2) In case shares are held jointly by two or more persons, the certificates to be issued under Sub-Section (1) shall mention the names of all such joint holders and may be issued to any one of them.

(3) In case the certificate mentioned in Sub-Section (1) is lost or damaged, the owner thereof shall submit an application to this effect to the head office of the company within thirty five days from the date of such loss or damage.

(4) In case an application is filed by any person under Sub-Section (3), the company shall publish a notice in the press to the effect that in case any person has any objection to the issuance of a fresh certificate to the applicant, he should file a complaint within thirty-five days from the date of the publication of such notice. In case any complaint is received from any person thereafter, and in case it is deemed necessary to establish the claim, the company shall issue a notice to both the parties to the effect that action on the claim will be taken after they establish their respective claims through the court. In case no complaint is filed within this time-limit, the company shall issue a fresh Certificate to the applicant after indicating the matter accordingly. The company shall indicate the matter also in the register of shareholders.

25. Issue of Loans or Debentures

(1) The Board of Directors of a company may, if it so deems necessary, issue loans, explaining the reasons therefor, the purpose of such loans, and the estimated amount required for this purpose.

Provided that :

(a) In case loans or debentures are to be issued with the company's assets as collateral, the company shall submit an application to the appropriate department, and issue such loans or debentures only after obtaining necessary approval. It shall register the bonds in respect to such loans or debentures in accordance with current Nepal law.

(b) In case loans or debentures are sought to be issued without mortgaging the assets of the company, the appropriate department shall be notified accordingly within seven days after the issuance of such loans or debentures. The amount of such loans shall not exceed fifty percent of the paid-up capital.

(c) A company shall not issue such loans or debentures unless it has obtained a certificate for commencement of business under Section 44.

(2) Notwithstanding anything contained in other current Nepal law, subject to the provisions of Sub-Section (1), the company may obtain further loans from other creditors against assets which have already been pledged to its creditors, within the limit of the value of such assets, provided that the previous creditors and the amount of loan already obtained are mentioned explicitly. The registration office shall register documents relating to such transactions.

(3) Notwithstanding anything contained in other current Nepal law, the terms, time-limit for redemption, interest, and other conditions of loans obtained or provided by the company shall be as indicated in the bond and conditions stipulated between the creditor and the debtor.

(4) The company shall maintain a separate register mentioning the name and address of every creditor from whom it has obtained loans, or to whom it has sold debentures, the amount of such loans or debentures, and other particulars.

26. Transfer of Shares

The shares of a company may be transferred or mortgaged like movable property in accordance with law.

Provided that :

(a) Transfer or mortgage of the shares of a private company to any person other than shareholders shall require the approval of the Board of Directors. In case no such approval is sought, or in case such transfer or mortgage increased the number of shareholders to more than fifty even though approval is obtained, the transaction shall not be valid.

(b) Shares subscribed by the promoters of the company shall not be transferred or mortgaged until the first general meeting of the company is held and until such shares are fully paid-up.

27. Registration of Notices of Transfer of Shares

(1) In case shares are mortgaged under Section 26, the mortgagee shall submit an application according to specimen form No. 4 indicated in Schedule 1, along with certificate mentioned in Section 24, to the registered office of the company, for the purpose of recording such the company shall act in accordance with the provisions of Sub-Section (3).

(2) In case title to shares is relinquished under Section 26, the person acquiring such title shall submit an application according to specimen form No. 5 as indicated in Schedule 1, along with a copy of the concerned document and the certificate mentioned in Section 24, to the registered office of the company. On receipt of

such application, the company shall act in accordance with the provisions of Sub-Section (3).

(3) In case any application is filed under Sub-Section (1) or (2) and no complaint is received from existing shareholders even within thirty-five days from the date of the receipt of such application, and in case transfer of shares is refused under Section 28, the fact of the shares having been mortgaged, the name of the mortgagee, the date of mortgage, the value of the transaction, and date of mortgage, the value of the transaction, and the terms thereof, shall be indicated in the shareholder register., Entries relating to such mortgage shall be struck off the register on receipt of notice of redemption thereof. In cases of relinquishment of title, brief particulars of the concerned document shall be entered in the register, the name of the transfer or shall be struck off, and the shares shall be registered in the name of the transferee. In case any complaint is filed regarding ownership of shares connected with such transfer, action shall be taken according to the final decision of the court.

Provided that it shall be necessary to obtain the prior approval of the Board of Directors to enter any mortgage or transfer in the register as required under this Section.

(4) Transfer of shares shall be entered in a register to be maintained for the purpose according to specimen form No. 6 indicated in Schedule 1, and such register shall be signed by the authorised representatives of the Board of Directors and the the managing agent, if any.

(5) The applicant shall pay a fee of one rupee to the company for having a mortgage or transfer of shares registered under Sub-Section (3).

28. Power to Withhold Permission to Register Notice of Share Transfers

(1) The company may refuse to register a mortgage or transfer of shares in the following circumstances :

(a) In case the shares are not fully paid-up.

(b) In case the document and the share certificate to be submitted under Section 33 are not submitted along with the application.

(c) In case there is any objection to the transfer of shares, or

(d) In case fees are not paid under Sub-Section (5) of Section 27.

(2) In case any application for registration of a mortgage or transfer of shares is rejected under Sub-Section (1), both the transfer or and the transferee shall be notified accordingly within thirty-five days after the receipts of the application.

29. Other Circumstances in Which Shares May be Transferred

In case any shareholder dies or become is solvent, or in case the title to the shares held by him devolves on any person under current Nepal law for any other reason, and in case the person so acquiring title thereto submits an application along with evidence, the shares shall be transferred in his name subject to the provisions of Sub-Section (1) of Section 28.

30. Register of Shareholders

(1) Every company shall maintain at its head office according to specimen form No. 7 of Schedule a register of its shareholders according to the serial number of shares, with the following particular in respect to each shareholder :

- (a) Name and address, along with those of the grandfather and father,
- (b) Date of registrations as a shareholder,
- (c) Serial number of the share certificate obtained by the shareholder,
- (d) Total amount paid-up on the shares held by the shareholder, and
- (e) Date when his name was struck off the register of shareholders.

Provided that in case His Majesty's Government or any company, firm, or corporation, is a shareholder of the company, only their names may be registered in the shareholders register, and not the names of the grand-father and father as prescribed in Clause (a) of this Sub-Section.

(2) The register maintained under Sub-Section (1) shall be made available for inspection by the shareholders of the company if they desire to do so. Provided that :

(a) The company may be notified in the leading newspapers of Nepal in advance of seven days, close the register for a maximum period of three days at one time, but not exceeding forty-five days in a year.

(b) In the case of a private company, no person other than its shareholders shall be entitled to inspect such register.

(3) In case any person wants to obtain a copy of the register mentioned in Sub-Section (1), he may be allowed to do so on payment of a fee of one rupee except when the register is closed, or he is not entitled to inspect such register under the restrictive clause of Sub-Section (2).

31. Records of Shares, Debentures, Etc.

(1) At the time of the annual general meeting of the company, the company shall every year prepare a record of existing and former shareholders.

(2) The record mentioned in Sub-Section 1, shall be prepared according to specimen form No. 8 as indicated in Schedule 1. It shall explicitly mention the names and addresses of existing and former shareholders, the number of shares held in the names of existing shareholders, the date when the sale or purchase of shares by any of such shareholders was indicated in the records, or when the transfer of shares was registered, and the number of such shares in addition to the following particulars :

- (a) Authorized capital and the number of shares of the company,
 - (b) Issued share capital,
 - (c) Calls made on each share,
 - (d) Total amount paid-up,
 - (e) Total amount due due on shares,
 - (f) Total amount paid on shares and debentures or as brokerage,
 - (g) Total number of shares forfeited by the company, if any, the reasons thereof and the date of such forfeiture,
 - (h) Total value of shares for which certificates have been issued to shareholders till the date when the record was compiled,
 - (i) The number of shares indicated in each share certificate,
 - (j) Names and addresses of the present directors and of the managing agent,
 - (k) The amount of loans obtained or debentures issued by the company with its assets as collateral,
 - (l) Total amount of loans taken by the company without mortgaging assets, and
 - (m) Other necessary particulars.
- (3) The record prepared under Sub-Section (1) shall be submitted by the company to the appropriate department within thirty-five days from the date of the annual general meeting of the company, along with certificate signed by at least two directors to the effect that all the particulars contained therein are correct.

32. Lien on Shares

The company shall have lien on all shares on which payment of installments is due from shareholders, and it may freeze the shares and the dividends to be paid thereon and recover the arrears from such dividends.

33. Payment on Shares

- (1) Payment on shares shall be made whenever calls are made in accordance with the articles.
- (2) When making calls under Sub-Section (1), a public company shall send a notice in writing according to specimen form No. 9 as indicated in Schedule 1 to every shareholder, prescribing a time-limit of thirty days and the place and time for payment. The notice shall be published also in the leading newspapers of Nepal.

(3) In case any shareholder fails to pay the amount due on shares within the prescribed time-limit, a written notice shall be sent to him and also published in leading newspapers, allowing an extension of fifteen days and specifying that in case the payment is made within the extended time-limit, it shall be accepted with interest at five percent per year, and that in case payment is not made even within the extended time-limit, the concerned shares shall be forfeited. But in case the shareholder submits an application within three months after the expiry of this time-limit indicating satisfactory reasons for his failure to pay up the installment due from him, the Board of Director may retain the shares as fully paid up to the extent of the amount actually paid-up.

(4) Shares forfeited by the company under Sub-Section (3) may be sold or issued in any other manner, or cancelled on such conditions and in such manner as the Board of Directors may deem appropriate, subject to the articles of the company.

34. Payment of Shares Held Jointly

In case shares are held jointly, the joint holders shall be jointly or individually liable to pay installment due thereon.

35. Equal Ownership to be Recognised

In case there is no document duly specifying the shares of each holder in respect to shares held jointly, each of them shall be deemed to have an equal share therein.

36. Ownership of Shares and Debentures

The person in whose name the shares, debentures, etc. of the company are registered shall be regarded as owner thereof.

37. Increase of Share Capital

(1) In case any company intends to increase its share capital, it shall present a special resolution to the effect at its general meeting. In case such a resolution is passed, an application shall be submitted to the appropriate department for approval make necessary amendments in the memorandum and articles for the purpose. Such amendments shall not be made in the memorandum and articles, and the share capital shall not be increased, without the approval of the department.

(2) In case any increase in the capital after obtaining approval under Sub-Section (1) necessitates the issue of new shares or enhancement in the value of shares, a fresh prospectus as mentioned in Section 15 shall be published, and a notice to this effect also shall be sent to the appropriate department.

(3) The right of pre-emption in respect to shares increased under the provision of Sub-Section (1) shall vest in the shareholders and the staff and workers of the company. Such shares shall be sold to shareholders in proportion to their existing shareholding, and to workers and employees in the manner prescribed by the company.

(4) With the exception of the profits of the company, or funds created from profits, the assets of the company shall not be revalued for issuing or increasing shares or bound shares.

(5) Prior approval of the appropriate department must be obtained for issuing shares by adding premium to the value of shares.

38. Reduction of Share Capital

(1) In case it is required to reduce the share capital, the company shall present a special resolution to this effect at its general meeting. In case such a resolution is passed by the general meeting, an application shall be submitted to the appropriate department for approval to make necessary amendments in the memorandum and articles and to reduce the share capital. No such amendment shall be effected in the memorandum and articles, nor shall the share capital be reduced, without the approval of the department.

(2) After the approval of the appropriate department is obtained, the share capital may be reduced in the following manner :

(a) By retaining only such amount as has been actually paid-up, in case calls made on shares are not fully paid-up, or

(b) By refunding the capital already paid up and reducing the number of shares, or

(c) By devaluing shares, in case the company has sustained losses or suffered from natural calamities.

39. List of Creditors to be Submitted to the Appropriate Department

In case the company submits an application for the approval of a resolution seeking to reduce its capital, it shall also attach a list of all of its creditors along with their names and addresses, signed by all of its directors.

40. Notice to be Issued by the Appropriate Department

(1) The appropriate department shall issue a notice directing creditors whose names may have been omitted from the list submitted by the company under Section 39 to apply for having their names registered in the list. The notice shall prescribe the time-limit within which creditors may submit applications opposing reduction in the share capital under Section 39.

(2) In case the appropriate department is satisfied that the consent of all the creditors of the company has already been secured for the proposed reduction in the share capital, or that the creditors have already been paid if, or that they have been given reliable security against their outstanding dues, it shall indicate the matter accordingly in the register and then approve the reduction in the share capital.

41. Reduction to be Indicated in Share Certificates

In case the share capital is reduced under this act, the concerned director shall indicate the matter accordingly in every share certificate and affix his signature thereon.

42. Company Prohibited From Purchasing Its Own Shares or Those of the Principal Company

No company shall purchase its own share capital, or that of its principal company, or issue or accept loans on the security, with its paid-up capital.

43. Notice Regarding Capital

A public company shall explicitly indicate also the number of subscribed shares, and the total amount actually paid thereon, in notices and advertisements relating to its authorized capital.

Chapter 3 Meetings and Business of the Company

44. Company Prohibited From Commencing Business without Fulfilling Formalities

(1) No company shall commence its business without fulfilling the following formalities :

(a) Unless an amount equal to at least 25 percent of the issued capital has been received.

(b) Unless a report of funds having been received according to Clause (a), signed by at least one director, is sent to the appropriate department.

(c) Unless a license for commencement of business is obtained from the appropriate department.

(2) The appropriate department shall grant a license to the company to commence its business after the report mentioned in Clause (a) of Sub-Section (1) is submitted.

(3) Notwithstanding anything contained in Sub-Section (1) and (2), a private company may commence its business immediately after obtaining the certificate of registration from the appropriate department.

45. General Meeting of a Company

(1) The business of a company shall be conducted in the manner decided upon at the general meeting of its shareholders.

(2) The general meeting of a company shall be of the following categories :

(a) Preliminary general meeting,

(b) Annual general meeting, and

(c) Extraordinary general meeting.

(3) Shareholders shall be notified of the agenda as well as the date and venue of the meeting in advance of twenty-one days in the case of the preliminary general meeting or annual general meeting, and of fifteen days in the case of an extraordinary general meeting. In case the company is a public one, a notification to this effect shall also be published in the leading newspapers of Nepal.

(4) No decision shall be taken in the general meeting on any subject which has not been already notified under Sub-Section (3), except in the following circumstances.

(a) Unless otherwise provided for in other sections of this act, in case at least three-fourths of the shareholders of the company who are entitled to vote attend the meeting and vote in favor of discussing any particular subject.

(b) In case there is any subject notified for discussion in any general meeting which has been adjourned.

46. Shareholders' Register to be made Available

The shareholders' register mentioned in Section 30 shall be made available at every general meeting, so that the shareholders may inspect it, if they so desire.

47. Directors to be Present at the Careful Meeting As Far As Possible

Every Director shall be present in the general meeting as far as possible. At least one auditor shall also be present in the general meeting in case the accounts of the company are to be discussed or in case his presence is required for any other reason.

48. Legality of Meeting

Before the general meeting commences, the shareholders present therein shall ascertain whether the meeting has been convened in accordance with this act or the articles or not. The meeting shall be deemed to have been duly convened even if any legal provision has not been observed in respect thereto in case the quorum mentioned in Section 51 has been fulfilled at the meeting.

49. Circumstances in Which Attendance or Voting is Prohibited

(1) No Person shall be entitled to participate and vote in the capacity of a shareholder either personally or by proxy on discussions to be held in respect to any contract signed by himself and the company. But he shall be given an opportunity to attend the meeting only for explaining his case.

(2) No director or managing agent, or his partner or proxy, shall be entitled to vote on discussions to be held in respect to his responsibility for action taken or omitted by him, or to any agreement, stipulation, or contract pertaining to his appointment, dismissal, transfer, and confirmation, or grant, reduction or increase in allowance or bonus, or involving his service or interest or concern in any way.

(3) No director or managing agent, or his partner or proxy shall be entitled to vote in the general meeting to be held in respect to the appointment of auditors.

(4) No Shareholder who has not paid installments due on shares according to calls shall be entitled to vote in the general meeting.

50. Right to Vote a General Meeting

(1) Only the person whose name is registered as shareholder in the shareholders' register mentioned in Section 30 shall be entitled to attend the general meeting and cast one vote for each share held by him, subject to the provisions of Section 49.

Provided that :

(a) In case a shareholder entitled to vote is unable to attend the meeting personally, he may nominate his proxy to vote on his behalf, through an application signed by him according to the specimen form No. 11 indicated in Schedule 1, and the proxy so nominated may attend and vote in the meeting.

(b) In the case of shares held jointly by several persons, only the vote or proxy of the joint owner nominated

by all the joint owners, or the proxy nominated by owner can be nominated as a proxy, the joint owner whose name is mentioned first in the shareholders' register mentioned in Section 36, shall be held valid.

(2) Notwithstanding anything contained in the restrictive Clause (a) of Sub-Section (1), in case the votes cast by any proxy represent more than twenty percent of the total shares, the excess votes shall not be taken into account.

50A. Voting Rights for Appointment of Directors

While voting for the appointment of directors every shareholder shall have the right to cast votes in the number obtained after multiplying the number of shares held by him by the number of directors to be appointed. A shareholder may cast all of his votes in favor of one candidate, or divide them among more than one candidate as indicated by him.

Provided that in case His Majesty's Government or any corporate body has to appoint directors under the restrictive Clause (c) of Sub-Section (1) of Section 64, such director shall not be entitled to vote in polls to be held under this Section .

51. Quorum

(1) The business of a general meeting shall not be conducted unless 25 percent of the total number of shareholders representing 67 percent of the total number of shares of the company are present there in either in person or by proxy.

Provided that the presence of at least seven shareholders in the case of a public company, and of three shareholders in the case of a private company, shall be compulsory for holding a general meeting in that manner.

(2) In case the meeting cannot be held for lack of quorum as prescribed in Sub-Section (1), another meeting shall be convened with an advance notice of at least seven days. In case another meeting is convened in this way, and at least five shareholders in the case of a public company, and two in the case of a private company, who represent 33 percent of the total number of shares and who are entitled to vote, are present therein in person, there shall be no obstacle in holding the meeting, notwithstanding anything contained in that Sub-Section.

(3) The presence of 33 percent of the total number of shareholders representing 75 percent of the total number of shares, either in person or by proxy, shall be compulsory in the case of a general meeting which is convened to discuss a special resolution.

Provided that in case meeting cannot be held because shareholders in the number mentioned above are not present, another meeting shall be convened with an advance notice of at least seven days. In case another meeting is convened in that way, and at least 15 percent of the total number of shareholders representing 33 percent of the total number of shares are present therein either in person or by proxy there shall be no obstacle in holding the meeting.

52. Discussions and Decisions

- (1) The general meeting shall be presided over by the Chairman of the Board of Directors and in his absence, by the person nominated by a majority of the attending shareholders from among themselves.
- (2) All matters to be discussed at the general meeting shall be presented in the form of resolutions.
- (3) The opinion of the majority (of the shareholders present in the meeting) in regard to any subject that has been voted upon shall be deemed to be the decision of the general meeting In the event of a tie the chairman may exercise his casting vote.

Provided that in the case of a special resolution, it shall be deemed to have been passed only if approved by the meeting by a majority of 60 percent (of the shareholders present in the meeting), subject to the provisions of Sub-Section (2) of Section 49.

53. Minutes

- (1) The company shall record the minutes of every general meeting in a separate book to be maintained for the purpose, and the chairman, at least one director appointed by the meeting, and one shareholder shall affix their signatures on the minute-book.
- (2) The minutes to be prepared under Sub-Section (1) shall explicitly state how the notice of the meeting was issued, how many shareholders were present, what percentage of the total share capital was represented by them, how many of them were or were not entitled to vote, what decisions were taken in the meeting, what was the result of the voting, if any, and other matters.
- (3) The minutes prepared under this Section shall be made available by the directors to the the shareholders within fifteen days of the general meeting.

54. Preliminary Meeting

- (1) Every company shall convene a general meeting of its shareholders within six months after obtaining a certificate of commencement of business from the appropriate department, and the meeting so convened shall be called the preliminary general meeting.
- (2) In case any shareholder of the company submits an application complaining that its preliminary general meeting has not been convened under Sub-Section (1), the appropriate department may direct the convening of the preliminary general meeting. Even in case on such application is received, it may arrange for such meeting to be held within two months after the expiry of the time-limit mentioned in Sub-Section (1).
- (3) Notwithstanding anything contained in Sub-Section (2), in case the company submits an application to the appropriate department for extension of the time-limit, explaining proper reasons for its inability to hold the preliminary general meeting within the time-limit mentioned in Sub-Section (1), the appropriate department may extend the time-limit by not more than three months at one times.

Provided that in case the company does not give prior notice as required under this act of its articles, no resolution shall be passed, except in the circumstances mentioned in Clause (a) of Sub-Section (4) of Section 45 in respect thereto.

57. Annual General Meeting

(1) Every company shall hold its annual general meeting within one year from the date of the preliminary meeting, and thereafter it shall convene the annual meeting every year within six months from the date of the expiry of its financial year.

(2) In case any company fails to convene annual general meetings within the time-limit prescribed in Sub-Section (1), and in case any shareholder submits an application explicitly mentioning reasonable grounds for such failure, the appropriate department may extend the time-limit by not more than three months.

(3) In case any company does not convene an annual general meeting even within the time-limit granted under Sub-Section (2), and in case any shareholder submits an application complaining that such meeting has not been convened, the appropriate department may direct the convening of the annual general meeting, and even if no such application is received, it may direct such meeting to be held within two months from the date of the expiry of the time-limit mentioned in Sub-Section (2).

58. Matters to be Presented and Discussed at the Annual General Meeting

(1) The directors shall present the audited balance sheet and profit and loss accounts for the previous year, as mentioned in Section 93 and Section 95, at the annual general meeting.

(2) A shareholder or shareholders representing a minimum of five percent of the total votes may, if he or they so desire, move any matter for discussion at the annual general meeting, after submitting an application to the directors in advance of the issuance of a notice under Sub-Section (3) of Section 45.

(3) In addition to the matters presented under Sub-Section (1) and (2), debates shall be held at the general meeting also on the accounts of the company, the reports of the directors and auditors, the dividends to be paid to shareholders, appointment of directors and auditors, remunerations of auditors, etc. But while deciding on the dividends to be paid to shareholders, the rate thereof shall not exceed the figure recommended by the Board of Directors.

55. Preliminary Report

(1) At least fifteen days before the preliminary general meeting is held, a preliminary report containing the following particulars and signed at least by one director, shall be sent to each shareholder :

(a) Total number of shares allotted,

(b) Number of fully paid-up and partly paid-up shares from among the allotted shares,

(c) The manner in which shares were allotted,

(d) Total amount collected from persons to whom the shares were allotted,

(e) A statement of the income and expenditure of the company showing, under different heads, income made from shares, debentures, and other sources until seven days before the preparation of the statement, disbursements made from such income, the balance, accounts of the preliminary expenses of the company, and the estimated expenditure to be incurred subsequently,

(f) Names, addresses, and designation of directors, managers, secretaries, accountants, and auditors, and their appointment,

(g) Matters such as contracts and amendments to be effected therein,

(h) Amounts due from directors or the managing agent,

(i) Particulars of brokerage or any other commission paid or to be paid to directors or managers in consideration of their procuring subscriptions for shares, and

(j) Other necessary particulars, if any:

(2) The preliminary report shall contain statements of the amount paid up on the allotted shares, and shall have been certified by the auditor.

(3) After sending the preliminary report to the shareholders under Sub-Section 91), the directors shall submit a copy thereof to the appropriate department also.

56. Debate on the Preliminary Report

The shareholders present in the preliminary general meeting of the company may discuss any matter pertaining to the establishment of the company, or any matter arising out of the preliminary report, irrespective of whether prior notice thereof has been given or not.

59. Preparation of Documents for the Annual General Meeting

The documents, resolutions, and other matters to be debated at the annual general meeting to be held under Section 58 shall be prepared and kept ready at the head office of the company fifteen days before the meeting. In case any shareholder so requests, he shall be supplied with a copy of such documents,

60. Balance-sheet. Etc. to be Submitted to the Appropriate Department

Within thirty days after the annual general meeting is held, the balance-sheet, the profit and loss accounts, and the reports of the directors and auditors, as well as particulars regarding the number of shareholders

who attended the meeting, the resolutions discussed therein, and particulars general meeting or not, shall be submitted to the appropriate department.

61. Extraordinary General Meeting

(1) In case it so deems necessary, the board of Directors may convene an extraordinary general meeting of shareholders.

(2) In case the auditor, while auditing the accounts of the company, deems it necessary to convene an extraordinary general meeting for any reason, he may request the Board of Directors to do so. In case the Board of Directors fails to do so, he may submit a complaint to the appropriate department. In case such a complaint is received, the appropriate department may convene an extraordinary general meeting of the company.

(3) In case shareholders holding at least ten percent of the paid-up share capital of the company, or at least 25 percent of the total number of shareholders, submit an application to the registered office of the company for convening an extraordinary general meeting, explaining the reasons why such a meeting should be convened, the Board of Directors shall convene an extraordinary general meeting. In case the Board of Directors fails to do so within thirty-five days after receiving such application, the concerned shareholders may file complaints to the appropriate department. In case such complaints are received, the department may direct the convening of such a meeting.

(4) In case it is deemed necessary to convene an extraordinary general meeting on the basis of the findings of inspection or investigation, or for any other reason, the appropriate department may itself convene such a meeting, or direct the Board of Directors to do so.

62. Office of the Company and other matters

(1) A signboard indicating the name and address of the company shall be outside office.

(2) The company shall maintain a legible seal under its name. It shall print and maintain bills, latter pads, drafts, receipts, etc. under its name and address.

Chapter 4 Board of Directors

63. Board of Directors

(1) There shall be a board of Directors consisting of at least three persons in the case of a public company, and two persons in the case of a private company.

64. Appointment of Directors

(1) Directors shall be appointed by the general meeting of the company subject to the provisions of Section 66.

Provided that :

(a) Until the preliminary general meeting is held, directors shall be appointed by the persons who sign the memorandum.

(b) In case there any vacancy in the the post of any directors before the general meeting is held, it shall be filled up by the Board of Directors itself.

(c) The appropriate department, in the case of a company in which His Majesty's Government holds shares, and the appropriate corporate body, in the case of a company in which a corporate body holds shares, may appoint directors in proportion to the value of the shares held by it.

(d) In case the appropriate department feels that any company is not functioning properly, it may appoint one director in such company, even if His Majesty's Government has not subscribed to its shares.

(2) The rights and liabilities of the directors appointed under the restrictive clause of Sub-Section (1) shall be similar to those vested in the directors appointed by the general meeting.

(3) In addition to the directors to be appointed under this act, the appropriate department, or any corporate body, may also appoint alternate directors, who shall exercise the power and discharge the duties of directors in their absence.

65. Qualification Shares of Directors

Any person, in order to qualify as a director of any company, shall purchase such shares as are prescribed in the articles of the company within two months from the date of his appointment. In case he does not purchase such shares within the prescribed time-limit, his appointment as a director shall be invalid.

Provided that the director appointed under Clauses (c) and (d) of Sub-Section (1) of Section 64, or representing the managing agent or corporate body subscribing to share as prescribed in the articles in order to qualify as a director, shall not be required to become a shareholder.

66. Qualification of Directors

(1) No person shall be appointed a director in the following circumstances :

(a) In case he is below twenty-one years of age,

- (b) In case he is unsound-mind
- (c) In case he is insolvent,
- (d) In case he has been convicted by a court of theft, fraud, or misappropriation and embezzlement of goods or funds entrusted to him, and has been punished accordingly, or
- (e) In case he has any personal interest in any contract or transaction with the concerned company.

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

- (a) In case he possesses any of the disqualifications mentioned in Sub-Section (1),
- (b) In case he absents himself from three consecutive meetings of the Board of Directors without giving satisfactory reasons for such absence,
- (c) In case he frequently disobeys the appropriate department or the Board of Directors,
- (d) In case the general meeting votes him out of office by a two-thirds majority,
- (e) In case his resignation is accepted,
- (f) In case he is convicted by the court of dishonesty in the business of the company,
- (g) In case he commies any offence which is punishable with dismissal from the post of director under this act.

(3) Notwithstanding anything contained in Sub-Section (1) or (2),

- (a) Subject to the resolution of the general meeting and the approval of the appropriate department, any person mentioned in Clause (e) of Sub-Section (1) may be appointed or continue as director.
- (b) The disqualification mentioned in Clause (a) or Clause (b) of Sub-Section (1) shall not be applicable to any person unless confirmed by a government medical practitioner.
- (c) Before any person is disqualified form being appointed or continuing as director, he shall be served with a notice to this effect. In case such a person submits any evidence in his defence, it shall be taken into consideration.
- (d) Clauses (b) and (d) of Sub-Section (2) shall not be applicable to the director nominated by His Majesty's Government or the managing agent.

67. Tenure of Directors

(1) The tenure of the director of every public limited company shall be of four years.

Provided that :

(a) A director appointed by the appropriate department or by a managing agent, or by a corporate body, shall hold at the pleasure of the appointing authority.

(b) A director appointed under the restrictive Clauses (a) and (b) of Sub-Section (1) of Section 64 shall hold office until the annual general meeting is held.

(c) A director appointed by the general meeting to fill up any mid-term vacancy in the post of director shall hold office only for the remaining term of his predecessor.

(2) The term of (member) of the Board of Directors of a company established prior to the commencement of this act shall be deemed to have expired on the date when one-third of the directors are due to retire for the first time after the commencement of this act, irrespective of when the term of the other directors is due to expire.

(3) The term of the directors of a private company shall be as prescribed in the articles.

(4) A director who retires on the expiry of his term shall be eligible for re-election.

(5) For the purpose of Sub-Section (4), the term of a director who is in office on the date of the commencement of this act shall be rendered as the first term.

68. Remunerations, Allowances, Rewards Etc. of Directors

(1) The remunerations to be obtained by directors for attending the meeting shall be as prescribed in the articles.

(2) The monthly remunerations as well as daily and traveling allowances for directors while conducting the business of the company shall be as prescribed by the general meeting.

(3) The general meeting may, with the approval of the appropriate department, grant rewards not exceeding five percent of the not profit to the directors in order to encourage them.

Provided that such reward shall not be provided to a managing agent enjoying agency commission, or to any director appointed by him.

69. Powers and Duties of the Board of Directors

(1) Subject to the provisions of this act and the articles, as well as the decisions taken from time to time by the general meeting, the Board of Directors shall make all arrangements regarding the business of the company, and exercise its powers and discharge its duties.

(2) The Board of Directors may appoint such employees as may be required for conducting the business of the company.

Provided that in case any blood relative of the director of a public company, who has coaercenary rights to his property in the absence of a direct heir, is to be appointed in the company, the approval of the general meeting and the appropriate department shall be necessary.

(3) Except in accordance with the decision of the general meeting or the approval of appropriate derive personal benefit through the company.

(4) Unless otherwise provided for in the memorandum and articles, the Board of Directors may appoint any director or any employee of the company as its representative and delegate any or all of its powers to him to enter into correspondence or to execute any bond or contract or to endorse bills of exchange, promissory notes, or shares on behalf of the company individually or jointly.

(5) The company shall not be responsible for any action taken by any person in the capacity of its director of representative beyond his authority.

(6) In case any person makes any dealings with the director or representative of the company knowingly or having reason to believe that the director or representative is dealing with him for his personal interest or for causing loss or damage to the company in respect to such dealing.

69A. Appointment of Managing Director

The Directors may appoint a Managing Director from among themselves subject to the articles (of the company).

69B. Appointment of Company Secretary

A public company with a share capital investment exceeding Rs 5 million shall appoint a person possessing at least a Bachelor's Degree is Commerce or Law in the post of Company Secretary within a period of one year from the date of commencement of this Section.

69C. Functions, Duties and Powers of Company Secretary

(1) It shall be the duty of the Company Secretary to implement the decisions taken by the Board of Directors and the general meeting and the directives issued by the appropriate department or agency, as well as to submit the particulars, document, decisions, etc. to be submitted to the appropriate department or any other agency according to this act or other current Nepal law in time.

(2) The Company Secretary may perform the following functions subject to this act and the memorandum and articles of the company :

(a) To convene meetings of the Board of Directors and general meetings .

(b) To prepare the agenda of meetings of the Board of Directors and general meetings, and send them to

the concerned directors and shareholders.

(c) To maintain records of the decisions of the Board of Directors and the general meetings, authenticate them, take charge of them, and send them to the concerned directors and shareholders.

(d) To send notices regarding share allotments in accordance with the decision of the Board of Directors, and of calls for payment of installment.

(e) To keep the register of shareholders as well as the records of shareholders and debenture holders in a correct and accurate manner, take charge of them, and authenticate them.

(f) To record the mortgage of shares or debentures; to present application before the Board of Directors or the Managing Director for their transfer or transmission.

(g) In case the claim, complaint, grievances, suggestions, advice, etc. of shareholders or debenture-holders are submitted in writing, to forward them to the Board of Director or the Managing Director or other agencies, and to inform the concerned shareholder or debenture-holder in writing about the outcome of the actions taken in that connection.

(h) To perform other functions prescribed by the Board of Directors.

(3) The company Secretary must not sell or purchase the share of the concerned company or of the subsidiary company in his own name or in the name of his family so long as he remains in that post. In case any sale or purchase of any share in that manner subsequently comes to light, the concerned share shall be forfeited by the appropriate department.

Provided that in case such company or subsidiary company has issued additional shares with the objective of increasing its capital, there shall be no restriction on his buying such shares.

(4) Except according to the decision of the general meeting and the approval of the appropriate department, the Company Secretary shall not deal in any way with or through the company that could benefit him.

70. Meeting of the Board of Directors

(1) The meeting of the Board of Directors of a public company shall be held at least six times a year. Provided that the interval between any two meetings shall not exceed three months.

(1a) Meetings of the Board of Directors of a private company must be held at least twice a year, and the interval between such meetings must be of at least four months.

(2) The directors shall be personally present in the meeting of the Board of Directors. Attendance by proxy shall not be permitted.

(3) No meeting of the Board of Directors shall be held unless it is attended by at least fifty percent of the total number of Directors who are entitled to vote.

(4) The decision of a majority in the meeting of the Board of Directors shall be binding, and in the event of a tie, the Chairman shall exercise his casting votes.

(5) Minutes regarding the number of directors present in the meeting of the Board of Directors, the subjects discussed and the decisions taken thereon shall be recorded in a separate book.

71. Past Action Not to be Invalid

In case any shortcoming is subsequently detected with regard to the appointment of any director under this act, action which he has already take in that capacity shall not be invalid merely for such reason.

72. Responsibility of Directors

In case any director of any company causes any loss or damage willfully or through negligence, such losses or damages shall be recovered from every director of the company from out of his personal property of a proportionate basis. In case no such loss or damage can be recovered from any of such directors on a proportionate basis, such amount as cannot be so recovered shall be realized from the remaining director or directors on a proportionate basis, and if the amount is still not fully recovered, it shall be recovered from the remaining director or directors on a proportionate basis. Such action shall be continued until the loss or damage is fully recovered. But in case any director registers his protest in writing against any action which results in such loss or damage, or is unaware of any such action having been taken, he shall not be liable to pay any compensation for such loss or damage.

73. Register of Directors

Every company shall maintain a separate record mentioning the full name, surname, address and occupation of its directors, submit a copy thereof to the appropriate department, and also notify it of change, if any, in the composition of the Board of Directors, within fifteen days.

Chapter 5 Managing Agents

74. Appointment of Managing Agents

(1) A managing agent may be appointed in the following circumstances :

(a) In case there is provision for the appointment of a managing agent in the memorandum or in the articles, or

(b) In case a special resolution for appointing a managing agent is passed by the general meeting, and the agreement between the company and the managing agent is approved by the concerned department.

(2) A managing agent appointed prior to the promulgation of this act shall remain in office for the term prescribed in the agreement or contract concluded between him and the company, or provided for in the memorandum or the articles. On the expiry of this term, the provisions contained in Sub-Section (1) and Section 75 shall be applicable to such managing agent also.

(3) Sub-Section (1) and Clause (a), (c), (f) and (g) of Sub-Section (2) as well as the provision of Sub-Section (3) of Section 66, which relate to the appointment and term of directors, shall be applicable to managing agent also.

75. Term of Managing Agent

The maximum term of a managing agent appointed under Section 74 shall be fifteen years with effect from the date of his appointment for the first time. Thereafter, his term may be extended by maximum of ten years at one time with the approval of the general meeting of the company and the appropriate department.

76. Remuneration, etc. of Managing Agent

(1) In case the remuneration and the commissions of the managing agent are not prescribed in the memorandum or the articles, these shall be as prescribed by the general meeting subject to the agreement signed between the company and the managing agent. Such commissions shall not exceed ten percent of the net profit of the company.

Provided that such remuneration and commissions shall have been approved by the appropriate department.

(2) For the purpose of Sub-Section (1), the net profit of the company shall be calculated after making the following deductions from the gross income of the company during any financial year :

(a) Bonuses to be paid to employees and workers of the company.

(b) Taxes, dues, fees, etc. imposed by His Majesty's Government or any other agency on the company in accordance with the law.

- (c) Losses brought forward from the previous financial year, bring the excess of expenditure over income.
- (d) Expenses incurred in litigation.
- (e) Losses, compensation or fines paid by the company according to the orders or decisions of the court.
- (f) Premium to be paid to insurance company.
- (g) Expenses involved in running the company.
- (h) Interest on loans and debentures.
- (i) Repair and maintenance expenses.
- (j) Depreciation.
- (k) Contributions on donations made by the company.
- (l) Premiums on the sale of Shares.
- (m) Value of forfeited shares.
- (n) Amounts invested by the company, which are considered to be irrecoverable.
- (o) Profits from the sale of the company's assets.
- (p) Salaries, remunerations, fees, allowances, etc. paid to the directors, managing agent or other employees of the company.
- (q) Compensation paid by the company voluntarily.
- (r) Other necessary expenses.

(3) In case it is required to effect any amendment in any contract relating to the managing agency signed between the company and the managing agent, a resolution to this effect shall be passed by the general meeting and submitted to the appropriate department for approval. No such amendment shall be made unless approval is obtained from the appropriate department.

77. Powers and Duties of the Managing Agent :

- (1) Unless otherwise provided for in the memorandum or in the articles, the managing agent shall exercise such powers and perform such functions of the Board of Directors as it may prescribe.
- (2) The managing agent shall exercise his powers and perform his duties in the name of the company, under the supervision of the Board of Directors.
- (3) In case any work of the company is held up on account of the temporary absence of the managing agent

for any reason, it may be performed by the Board of Directors during the period of his absence. All work so performed shall be deemed to have been performed by the managing agent.

78. Shares to be Purchased by Managing Agent

The managing agent shall subscribe to at least twenty percent of the issued share capital of the company. He shall not be entitled to transfer or mortgage those shares during his term of office. In case any amount remains due from him after he ceases to remain in the post of managing agent, the company may recover it from out of such shares.

79. Functions Which the Managing Agent Shall Not Perform

Unless otherwise provided for in memorandum or the articles, the managing agent or his partner shall not perform or duct others to function any of the followings functions with the motive of providing personal profile.

(a) To undertake any business union the company is already doing, or any similar business connected therewith, competition in with the company.

(b) To take up a monopoly or sole agency for the sale and purchases of goods manufactured or to be manufactured by the company.

80. Post of Managing Agent to be Deemed Vacant

The post of managing agent shall be deemed to be vacant in the following circumstances :

(a) If the managing agent is a firm , in case any partners thereof become insolvent or in case the firm itself become insolvent for any reason, or

(b) If the managing agent is a corporate body, in case it goes into liquidation voluntarily, or according to the orders of the court, or

(c) In case the managing agent is held by the court to be suffering from any disqualification under the provision of Sub-Section (3) of Section 74.

81. Suspension of Managing Agent

In case a suit of insolvency is filed against the managing agent or in case any creditor files any claim against the managing agent on the basis of any document executed by him, and in case the court, before pronouncing a judgement thereon, directs that the assets of the managing agent shall be placed under the charge of a receiver, such managing agent shall be suspended.

82.

In case the managing agent of any company, or if the managing agent is a firm, any of its partners, or if the managing agent is a corporate body, the director or any other person who holds the power of attorney, is sentenced to imprisonment by any court after the promulgation of this act, such managing agent shall be dismissed by the Board of Directors.

(2) In case the managing agent causes losses to the company as a result of gross negligence or mismanagement of the business of the company, the general meeting of the company may, by means of a special resolution, remove him with the approval of the appropriate department.

83. Convening of General Meeting

(1) At least two directors of the company may send a notice in writing to the Board of Directors requesting the convening of the general meeting to discuss the resolution mentioned in Section 82. Provided that nothing mentioned in this Sub-Section shall affect the power to convene a general meeting in accordance with other provisions of this act or the articles.

(2) On receipt of the notice mentioned in Sub-Section (1), the Board of Directors shall duly send a copy thereof to the managing agent and convene an extraordinary general meeting.

84. Resignation of Managing Agent

(1) Unless otherwise provided for in the memorandum, the articles or the agreement, the managing agent may resign from his post by submitting a notice to the Board of Directors in advance of three months. But the managing agent shall not relinquish his post unless his resignation is approved under Sub-Section (5).

(2) On receipt of the notice of resignation from the managing agent, the Board of Directors shall direct him to prepare and submit a report on all the business and transactions of the company until the day preceding the date specified in such notice of resignation or the date when his term of office expired, as well as a balance-sheet and a profit and loss account for the period beginning from the date when the last balance sheet was presented to the date of the termination of the managing agency.

(3) In case the managing agent fails to prepare such report, balance sheet or profit and loss account as directed by the Board of Directors under Sub-Section (2), the Board of Directors itself shall prepare these documents.

(4) The Board of Directors shall submit such report, profit and loss account, balance-sheet as well as the report of the auditor, to the general meeting of the company along with the letter of resignation tendered by the Managing agent.

(5) After the resignation of the managing agent is submitted in accordance with Sub-Section (4), the general meeting, by means of a resolution or may not accept the resignation.

85. Liability of Managing Agent

In case the company incurs losses because of the failure of the managing agent to fulfill his duty or of any unauthorised action taken by him during his term of office, such managing agent shall continue to be liable for such losses after the termination or relinquishment of his managing agency.

86. Notice to be Submitted to Appropriate Department

In case the post of managing agent falls vacant for any reason, the company shall notify the appropriate department accordingly.

87. Claims of Other Persons to Managing Agency Not to be Entertained

88. Claim for Compensation Not to be Entertained

In case the managing agent is suspended or dismissed, or in as his resignation is accepted under this act, he shall not be entitled to file any claim against the company for any compensation. But in case there is any other kind of transaction between him and the company, this Section shall not be deemed to have debarred the managing agency from filing claims in respect to such transactions.

89. Personal Liability for Payment

In case the managing agency of a public company is operated jointly by more than one person, such managing agency shall be registered at the appropriate department in accordance with this act. In case compensation is to be paid for the losses or damages a used by such managing agent, such amount as cannot be paid from out of the assets of the managing agency shall be recovered from out of the personal property of every partner thereof, as a director is required to do under Section 72.

90. Liability of Directors

In case the managing agency of a public company causes any loss or damage to the company deliberately or through reglignce or by working in contravention of this act, he shall be liable for such losses or damages. But in case such loss or damage. But in case such loss or damage has resulted from the failure of the Board of Directors to pay proper attention or make proper arrangements, the directors also shall bear liability for such portion of the losses as cannot be recovered from the managing agent.

Chapter 6

Accounts of the Company

91. Accounts, etc. of the Company

- (1) Every company shall duly maintain its accounts in the Nepali language. For the convenience of the company, the accounts may be maintained in English also. But in case accounts are maintained in both these languages, accounts maintained in the Nepali language shall be deemed to be authoritative.
- (2) The account to be maintained under Sub-Section (1) shall contain particulars of the income made by the company, sales and purchase of goods, and a detailed statement of its assets and liabilities, in such manner as to clearly reflect the actual position of the company.
- (3) The accounts of the company shall not be kept at any place other than its registered office without the approval of the appropriate department. The directors may, if they so desire, inspect the accounts at any time.
- (4) The cash balance of the company, other than the amount prescribed by the Board of Directors, shall be deposited with the bank, where there is any.
- (5) A company having branches shall obtain accounts from them every three months.

92. Preparation of Balance Sheet

- (1) The Board of Directors shall prepare a profit and loss account and a balance-sheet according to Section 93 every year at least thirty five days before the annual general meeting is convened. Such profit and loss account and balance-sheet shall have been audited and shall bear the signature of the directors. A copy of the director's report shall be attached therewith.
- (2) In the case of the first year of establishment of the company, the profit and loss account to be prepared under Sub-Section (1) shall include accounts for the period beginning from the date when it was incorporated up to the end of its first financial year, and in the case of subsequent years, for the period of the previous financial year.
- (3) The auditor shall submit a copy of the report along with the balance sheet and the profit and loss accounts audited by him to the registered office of the company addressed collectively to all the shareholders, and another to the appropriate department.
- (4) The report to be submitted by the Board of Directors under Sub-Section (1) and by the auditor under Sub-Section (3) shall indicate the actual position of the company. The Board of Directors, in its report, shall recommend the amount, if any, to be maintained in the reserve fund as well as the dividend which may be declared. In addition, the report shall indicate the changes in the company or its business or any other matter in respect thereto, or any other matter in respect thereto, or any loss or damage therein.

(5) The balance-sheet prepared under this Sub-Section shall be made available for inspection by any shareholder, if he so desires.

93. Particulars to be Indicated in Balance-Sheet

(1) The balance-sheet shall contain, as far as possible, correct particulars as mentioned below in regard to the company's capital, liabilities and assets, so that it recollects the actual position of the company.

(a) Capital and Liabilities

(1) Authorised capital, as provided for in the memorandum, issued capital, subscribed shares, paid-up capital, reserve fund and other reserves.

(2) Long-Term Loans

(a) Debentures

(b) Other long-term loans

(3) Short-Term Loans

(a) Acceptances

(b) other short-term loans

(4) Other Liabilities

(5) Profits Earned from the Business of the Company

(a) Profit brought forward from previous years.

(b) Profit earned during the year.

(c) Assets

(1) Immovable Assets and other Fixed Assets

(a) Houses and compounds and other assets

(b) Plants, machinery and other equipment

(c) Patents, trade- similar other rights

(d) Goodwill of the company

(e) Preliminary expenses of the company.

(f) Shares held in other companies.

(g) Capital invested in debentures and similar other investments.

(2) Movable Assets

(a) Stock-in-trade, goods under process of manufacture, stocks of raw materials.

(b) Securities other than shares and debentures, not meant for investment.

(c) Acceptances.

(d) Receivable bills and advances.

(e) Cash in hand, checks and bank balances.

(f) Other particulars, if any.

(c) Losses Incurred by the Company in Course of Business

(1) Losses brought forward from previous years.

(2) Losses Incurred during the current year.

(2) In case the company has granted loans to its directors or employees, it shall indicate this matter in the balance-sheet.

(3) In case the company has stood surety to secure the liabilities of any person or in case the company itself undertaken any liability, these matter shall be indicated in a note, if got mentioned in the balance-sheet.

(4) Loans and liabilities accepted with or without security shall be shown separately in the balance sheet while indicating the particulars of loans and liabilities therein under Sub-Section (1).

94. Valuation of Assets to be Indicated in Balance Sheet

(1) The price at which movable assets and other fixed assets of the company were acquired shall be indicated in the balance sheet while showing the value thereof.

Provided that :

(a) In case the price of such assets subsequently rises for any reasons and is accordingly assessed in the accounts of the company, the value may be shown in the balance-sheet on the basis of such prices.

(b) In case there is a fall in the value of such assets as a result of derreciation, such depreciation shall be deducted and only the value remaining thereafter shall be take into account.

(2) While assessing the value of shares held by one company in another company, the balance-sheet shall separately show particulars regarding the latter company, the category, number and value of shares and the total value of such shares.

(3) The company shall not indicate the goodwill of its business as an asset. Provided that in case the company has purchased the business and goodwill of any other company, the balance sheet may indicate the price at which such goodwill was purchased as an asset.

(4) While mentioning the value of manufactured or semi-manufactured goods and raw materials held in stock, the balance-sheet shall indicate the cost price or market price, whichever is lower.

(5) The balance-sheet may indicate as an asset the loans issued by the company only when there is definite or reasonable ground to believe that such loans can be recovered.

95. Particulars to be Indicated in Profit and Loss Accounts

The profit and loss account shall, as far as possible, contain the following particulars, clearly indicating the volume of the company's business during the period for which the accounts are given in the profit and loss account :

(1) Gross sales.

(2) Raw materials used up and the initial and subsequent stocks of manufacture goods.

(3) Depreciation and the reasons if a provision for depreciation has been made.

(4) Interest paid on loans or debentures, and other necessary particulars,

(5) Amount allocated for payment of loans.

(6) Amount allocated for reserve or for gratuities from out of the profits.

(7) Amount allocated for expenditure from out of the reserve fund.

(8) Salaries, allowances and fees and share, if any, on profit paid to the managing agent, directors, etc.

(9) Expenditure, as follows :

(a) Salaries, allowances, wages and bonuses paid to employees and workers.

(b) Amount allocated for the Provident Fund.

(c) Gratuities paid to employees.

(d) Freight and transport charges.

(e) Taxes, fees (other than tax on profit).

- (f) Power and fuel costs.
 - (g) Repair and maintenance.
 - (h) Travelling allowances.
 - (i) Other expenses, if any.
- (10) Amount of tax paid.
- (11) Income Accruing from the Following Sources
- (a) Interest and dividends accruing from investment.
 - (b) Other income, along with particulars thereof.
- (12) Profits earned or less sustained on the sale of immovable assets or investments.
- (13) Amount of dividend already paid or recommended for payment.
- (14) Particulars of changes, if any, made on the basis on which accounts have been prepared as well as particulars of the effect of such changes on the profit and loss account.

Chapter 7

Audit

96. Company to appoint Auditors

(1) Every company shall appoint an auditor in accordance with the act to audit its accounts.

(2) In case any company appoints any foreign citizen as its auditor, it shall also appoint a Nepali citizen, as far as possible, possessing the qualifications mentioned in the chapter, as a coordinator.

(Section 7 and Section 98 have been repealed by the 1975 Auditors Act)

99. Appointment of Auditors

(1) The annual general meeting shall appoint the auditors of the company from among auditors who have obtained certificate from the concerned department before the commencement of this section or from the Auditor-General's Department thereafter and retained such certificates. The name of such auditor shall be notified to the appropriate department within fifteen days from the date of his appointment. Provided that the appointment of the auditor until the convening of the first general meeting shall be made in the manner prescribed in the prospectus in the case of a public company, while in the case of an private company, the appointment shall be made by the Board of Directors.

Provided that far the purchase of Sub-Section (2) of Section 55, the auditor shall be appointed by the Board

of Directors. The remuneration of such auditor shall be as proscribed by the Board of Directors.

(2) The auditor appointed under Sub-Section (1) shall remain in office until the first annual general meeting is convened.

(3) No Auditor shall be appointed for more than three consecutive terms in the same public company.

100. Persons Who Cannot be appointed Auditors

The following persons of the firm in which they are partner shall not be appointed as auditor of any company and shall not remain in office even if they have been already appointed in that capacity :

(a) Director, managing agent, employee or worker of the company.

(b) Partner of the director, managing agent, employee or worker of the company.

(c) Debtors of the company.

(d) Any person who is a relative of the director or managing agent of the company or of his partner.

(e) Any person who has been punished on charges pertaining to audit.

(f) A person who is insolvent.

101. Audit to be Invalid

The audit of accounts done by a person who is appointed in contravention of this act shall be invalid.

102. Action to be Taken in the Event Failure to Appoint Auditor

In case the annual general meeting fails to appoint an auditor, the appropriate department itself shall appoint one. The remuneration's of such auditors must be borne by the company.

103. Accounts to be Furnished

The account and records of the company shall be furnished to the auditor for the purpose of audit in case he so demands at any time, and the appropriate director or employee shall forthwith give such explanations as may be asked by him.

104. Function and Duties of the Auditor

(1) The auditor shall submit a report addressed to the shareholders, to the company as well as to the appropriate department, on the accounts, records, and balance-sheet audited by him, explaining the following points. A copy of this report shall be sent by the company to every shareholder.

(a) Whether or not prompt replies to queries made by him and explanations sought by him were given to him.

(b) Whether or not the balance-sheet duly conforms to the provisions of the act.

(c) Whether or not accounts and records have been accurately maintained in accordance with existing law.

(d) Whether or not the balance-sheet has been correctly prepared so as to reflect the economic condition of the company.

(e) Whether or not the Board of Directors or the managing agent or the representative or any employee of the company has acted contrary to law or committed misappropriation or caused loss or damage to the company.

(f) Whether or not the business is being conducted satisfactorily.

(g) Suggestions, if any.

105. Vacancy in the Office of Auditor

In case the office of auditor falls vacant for any reason, the Board of Directors may appoint another auditor to fill up such vacancy for the remaining term of the predecessor, with the approval of the appropriate department.

106. Auditor to Certify

The auditor shall affix his signature on the accounts and records audited by him and mention the date on which he audited them.

107. Presence of the Auditor

The auditor shall be present in the general meeting of the company in case he is asked to do and shall provide accurate replies to all question which may be put to him in course of the discussions held therein on the accounts and records audited by him.

108. Auditor to Notify

The company shall send to the auditor a printed copy of the balance-sheet according to his audit report as it does to its members. In case the auditor finds that alterations have been made in the report attached to such balance-sheet, he shall forthwith notify the appropriate department accordingly.

108A. Audit in the Case of Companies Owned by His Majesty's Government

(1) Notwithstanding anything contained in the other Sections of this act :

(a) Audit operations relating to companies fully owned by His Majesty's Government shall be supervised and controlled by the Auditor-General's Department.

(b) In the case of companies partially owned by His Majesty's Government, or of those whose liabilities have been partially borne by His Majesty's Government, the auditor shall forward a copy of his report also to the Auditor General. In case such report indicates that there has been any shortcoming in the all of the company, the Auditor-General may issue necessary directives to the concerned company and it shall be the duty of the company to comply with such directives.

(2) Other matters relating to audit operations to be undertake under Sub-Section (1) shall be according to this act.

109. Remuneration of Auditor

The remuneration of the auditor shall be as prescribed by the Board of Directors, if he is appointed by he Board of Directors, and by the general meeting in case he is appointed by the annual general meeting.

Chapter 8 Explanation and Investigation

110. Appropriate Department Empowered to Call for Explanations

(1) In case it is required to have any unclear point in the document submitted by the company explained, or to call for explanations on any matter, the appropriate department may issue orders to the company demanding explanations on such matter with the time-limit prescribed by it.

(2) The employees of the company shall forthwith reply to the best of their knowledge to all queries that may be made by the appropriate department.

(3) In case any irregularity is noticed in the operations of the company in the course of an inquiry, the appropriate department may issue necessary directives to the company to regularise such irregularity, and it shall be the duty of the company to comply with such directives.

111. Appropriate Department to Depute Inspectors on Receipt of Application

In case shareholders representing at least ten percent of the paid-up capital of the company or not least one-fourth of the total number of shareholders submit an application, the appropriate

department may depute one more inspectors according to need to conduct investigation. The department shall obtain security from the applicant against the estimated excesses on such investigations.

112. Appropriate Department to Repute Inspectors

The appropriate department may depute one or more inspectors according to need to investigate the business of any company even if no application is submitted under Section 111, in case it is satisfied that :

- (a) The company is being run with the intention of cheating its creditors or otherwise committing fraud or to put any shareholder to inconvenience or difficulty, or
- (b) The public company or a private company which is a subsidiary of a public company does not furnish necessary information regarding its business.

113. Accounts and Records to be Submitted

The employees of the company shall produce, explain and hand over such account, records, registers, documents, etc. as may be demanded by the inspector deputed by the appropriate department.

114. Submission of Report

(1) The inspector shall, after completing investigations, submit a report of his finding to the appropriate department. The department shall send a copy of such report to the head office of the company as well as to the person applying for investigation where it has been conducted under Sub-Section 111. In case any shareholder makes a request for a copy of the report, the appropriate department may supply a copy to him on payment of as fee of Rs. 1.00.

(2) In case the report submitted by the inspector under Sub-Section (1) indicates that employee of the company or any other person has committed any offence against the company, the appropriate department shall direct the company to file suits or claims against such offenders.

(3) In case action is taken under Sub-Section (2) and in case the appropriate department wells that the company may be put to loss if its business continues to be in the hands of the person or persons responsible for such offences, it may suspend such person or persons and submit an application to the court for making necessary arrangements for running the business of the company. On receipt of such application, the court shall forthwith issue orders to the appropriate department to make necessary arrangements.

115. Expenses of Investigations

The expenses incurred in investigations conducted by the appropriate department under Section 111 or Section 112 shall be borne by the concerned company itself.

Provided that :

(a) In the case of investigations held under Section 111, if the application is found to have submitted applications for such investigation without proper reasons, the expenses shall be borne by the applicant himself.

(b) In case any employee of the company is found to have been involved in misconduct or committed fraud or forgery, the expenses shall be borne by the employee himself.

Chapter 9 Liquidation of Company

116. Circumstances in Which the Appropriate Department may Liquidate a Company

The appropriate department, in case it so deems proper, may order the liquidation of the company in the following circumstances :

(a) In case an application is submitted to the appropriate department for liquidation of the company after the general meeting of the company, by means of a special resolution, decides to liquidate it, or

(b) In case the preliminary meeting is not convened within the time-limit prescribed in Section 54 or in case no report is submitted to the appropriate department under Sub-Section (3) of Section 55, or

(c) In case the company does not commence business within a year of its registration or discontinues its business for one full year, or

(d) In case one or more creditors to whom at least half of the loans outstanding against the company is due submit an application to the appropriate department demanding that since the company has failed to repay loans even after the expiry of the time stipulated for repayment, it should be dissolved and amounts due to them should be realised according to law.

(e) In case the appropriate department prepares a memorandum deciding to dissolve the company on any reasonable ground.

(f) In case a loan has been advanced to the company against the guarantee of His Majesty's Government, and the company does not repay such loan according to the stipulated terms, or violates any other term or condition relating to the guarantee.

117. Procedure of Liquidation

(1) The company itself or its creditors may submit on application to the appropriate department for liquidation of the company in the circumstances mentioned in Section 116.

(2) The creditors, in their application for liquidation of the company, shall explain why this should be done and shall also furnish all available evidence in support of their application.

(3) Except in cases where the company submits an application for voluntary liquidation, in case the appropriate department feels that an order should be issued to liquidate the company, it shall, before issuing such order, ask the company to explain within fifteen days excluding the time required for the journey, why it should not be liquidated.

(4) In case the appropriate department or the company or the creditors applying for the dissolution of the company so desire, a meeting shall be held under the chairmanship of an employee of the appropriate department before issuing an order for the dissolution of the company, and the directors of the company and the applications shall be allowed to state their case verbally at such meeting.

(5) Unless otherwise provided for in this act, no action pertaining to the business of the company shall be taken after the issuance of an order for its liquidation. All the powers of the directors shall ipso facto lapse with effect from the date of the issuance of such order.

(6) Appointment and Remuneration of Liquidator and Auditor

(1) For the purpose of liquidating any company after issuing an order to this effect, the appropriate department shall appoint a liquidator, hereinafter called the Government liquidator. His remuneration shall be as prescribed by the department. The appropriate department may demand a security from the Government Liquidator.

120. Government Liquidator to Take Custody of Company's Assets

The Government Liquidator shall, as early as possible, take custody of all the account-books and records, as well as the entire assets owned by the company or in which evidence of its title is available and keep them under his control.

121. Powers of the Government Liquidator :

(1) Unless the appropriate department imposes any restrictions or limitations, the Government Liquidator shall exercise the following powers :

- (a) To file any case or take any other legal action or defend any case in the name of the company.
- (b) To perform such part of the business of the company as may be necessary to insure that the company is liquidated in a profitable manner as far as possible.
- (c) To auction or sell all movable and immovable assets of the company.
- (d) To execute all kinds of documents or issue receipts on behalf of the company, make calls on partly paid-up shares and settle all debts and liabilities.
- (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 incurred in course of liquidation, or for any other purpose, if necessary, by mortgaging or selling the assets of the company.
- (g) To make payments to creditors or to make compromise with persons claiming to be creditor or make any other arrangement.
- (h) To employ necessary employees, etc. for assisting him.
- (i) To perform all other functions which may be necessary to liquidate the company.

(2) Any creditor may submit an application to the appropriate department in connection with the exercise of the above mentioned powers by the Government Liquidator.

(3) The Government Liquidator may submit a report to the appropriate department for sanction in respect to any matter arising in course of the liquidation proceedings.

(4) The Government Liquidator may, if necessary, summon any employee of the company to furnish any information in respect to the establishment, business and assets of the company or any other matter.

122. Powers of Government Liquidator to Summon Creditors

(1) The Government Liquidator may convene a meeting of creditors and hold discussions with them in order to ascertain their views.

(2) The Government Liquidator may prescribe a time-limit to creditors to prove their respective claims and prevent any creditor from receiving any payment until their claims are proved.

123. Government Liquidator to Maintain Accurate Records

The Government Liquidator shall maintain accurate minutes or records of meeting or meetings convened by him on other prescribed matters. In case any creditor of the concerned company so desires, the Government Liquidator shall allow him to inspect such minutes or records.

124. Government Liquidator to Submit Accounts

The Government Liquidator shall submit to the appropriate department accounts of income and expenditure made by him in his capacity of liquidator at least twice a year, and the appropriate department shall have such accounts audited.

125. Order of Priority in Settlement of Liabilities

(1) The liabilities of a company which is under liquidation shall be settled in the following order of priority :

- (a) Expenses incurred in liquidating the company,
- (b) Loans taken with the assets of the company as collaterally if any,
- (c) Salaries and wages of the staff and workers, not exceeding Rs 500 each,
- (d) Land and other taxes or fees payable to the Government or any local self-government body,
- (e) Loans obtained against the company's assets which had been requested three months prior to the issuance of order of liquidating the company.
- (f) Other Loans.

(2) Except in case where the time-limit prescribed in Sub-Section (2) of Section 122 has expired, debts or liabilities next in the order of priority shall not be paid off unless the Government Liquidator is satisfied that those higher in the order of priority can be paid off.

(3) In case any assets remain in the possession of the company after all liabilities are settled, these shall be divided among the holders in proportion to the shares held by them. Provided that while dividing such assets, priority shall be given to preference shareholders. Only the balance left after making payments from out of such assets to preference shareholders shall be divided among shareholders on a proportionate basis.

126. Notice to be Given of Fraud Against Company Creditor

In case the Government Liquidator finds that any director or employee of the company has committed any fraud against the company or its creditors, he shall immediately notify the appropriate department, giving particulars of the unlawful acts committed in this regard. In case the department, after receiving such information, so deems proper, it may order the Government Liquidator to take legal action against persons committing such fraud.

127. Submission of Final Accounts

After completing the liquidation proceedings of the company, the government Liquidator shall submit the final accounts in respect thereto to the appropriate department, and in case such accounts are deemed correct after being audited, the appropriate department shall issue an order of dissolution and the company shall then be deemed to have been dissolved with effect from the date of such order.

128. Voluntary Liquidation

(1) The company may be voluntarily liquidated by a resolution of the general meeting in the following circumstances :

(a) In case the period prescribed in the articles for running the company, if any, has expired, or

(b) In case the company decides to liquidate itself voluntarily in consideration of its liabilities, or for any other reason.

(2) In case the general meeting passes a resolution for voluntary liquidation of the company under Sub-Section (1), it shall appoint one or more liquidators for the purpose. The remuneration of liquidator so appointed shall be as prescribed by the general meeting. Provisions of Sections 123 and 126 pertaining to the Government Liquidator shall be applicable also to the liquidator appointed under this Sub-Section.

(3) The general meeting shall also appoint one or more auditors for the purpose of auditing the accounts prepared by the liquidator. The remuneration of the auditor so appointed shall be as prescribed by the general meeting.

129. Department to be Notified of the Passage of Resolution for Voluntary Liquidation

In case the company passes a resolution for its voluntary liquidation, it shall forthwith notify the appropriate department accordingly and shall also publish a notification in this regard in the leading newspapers of Nepal within 15 days.

130. Business to be Discontinued After Voluntary Liquidation

Unless otherwise provided for elsewhere in this act, after a resolution passed for its voluntary liquidation, the company shall discontinue its business, except when it is necessary to continue such business to insure its liquidation in a profitable manner.

131. Powers of the Liquidator

Except when any restriction or limitation is imposed by the general meeting, the liquidator shall exercise all such powers as are exercised by the department Liquidator under Section 120 and Sub-Section (1) or Section 121.

132. Payment of Company Loans or Liabilities

(1) In case the liquidator feels that the company may not be able to pay in full debts incurred by it even within twelve months from the date when the company goes into liquidation he shall be forthwith convened meeting of the creditors of such company and present therein all particulars relating to its asset and liabilities.

(2) In case it is not possible to determine whether the debts incurred by the company can be paid off fully or not payment shall be made according to the order of priority mentioned in Section 125.

133. Petition to be Submitted to Appropriate Department for Deciding any Question

The liquidator or any creditor may submit a petition to the appropriate department for deciding any question arising in course of the liquidation recordings. In case such a petition is received, the appropriate department shall make a decision thereon within one month and communicate its decision to the petitioner within three days thereafter. In case the petitioner is not satisfied with such decision, he may file an appeal with the Supreme Court within thirty-five days from the date of being notified of such decision.

134. Voluntary Liquidation Not to Affect Powers of the Department

The mere provision of voluntary liquidation shall not affect the powers of the appropriate department to issue such orders as it may deem necessary in respect to the liquidation of the company under Section 128-133 on receipt of application from creditors or otherwise.

135. General Meeting to be Convened is the Event of Liquidation Proceedings

In case it takes more than one year to complete the liquidation proceedings, the liquidator shall convene a general meeting of the company at the end of the first year of the commencement of such work, or within three months after the expiry of every year thereafter. At such meeting, he shall submit all particulars of the

liquidation proceedings taken during the previous year as well as the accounts audited by the auditor.

136. Report to be Submitted to the General Meeting on Completion of Liquidation Proceedings

Subject to the provisions contained in Section 135, after completing the liquidation proceedings, the liquidator shall prepare a report thereon explicitly stating how the liquidation was effected and the liabilities of the company settled. He shall have the accounts properly audited and then convened a general meeting of the company for the purpose of submitting such report and accounts.

137. Dissolution of the Company

On completion of the liquidation proceedings, the liquidator shall forthwith submit a report to this effect to the appropriate department. On receipt of such report, the appropriate department shall publish a notification dissolving the company.

137A. Incorporation of Government Companies

(1) Notwithstanding anything contained in other Section of this act, His Majesty's Government may incorporate any company in such a manner that its shares are sold only to His Majesty's Government or to corporate bodies owned by His Majesty's Government.

(2) Notwithstanding anything contained in other Sections of this act, the companies mentioned in Sub-Section (1) and those in which more than 51 percent of the shares are purchased by His Majesty's Government shall be incorporated as public companies and the provisions contained in Section 3 and Section 4 relating to the number of promoters of company shall not be applicable in respect to such companies.

(3) In respect to the companies mention in Sub-Section (1), His Majesty's Government may, by notification in the Nepal Rajapatra, provide for the non-application of any provision of this act other than the provision of this Chapter, or for their application in a revised form or with conditions attached as mentioned in such notification.

137B. Government Companies to Comply With Orders and Directives of His Majesty's Government

Every government company shall comply with the orders and directives issued by the appropriate department.

Chapter 10 Provisions Relating to Foreign Companies

138. Foreign Company to Submit Documents

(1) Any foreign company desirous of undertaking business or already engaged in business in the Kingdom of Nepal shall have the company registered after submitting the following documents to the appropriate department :

- (a) An authentic copy or translation in Nepali or English of the Law or license under which the company was incorporated and established.
- (b) Authentic Nepali version of the memorandum and articles of the company.
- (c) Full address of the head office of the company.
- (d) A list of the directors, managing agent manager, secretary, etc. of the company along with the particulars mentioned in Sub-Section (2).
- (e) Name and address of resident representative or representatives of the company in Nepal, who is or are empowered to accept on its behalf time-limits, notice, etc. issued to it.
- (f) The main place where the business of the company will be or is being run in the Kingdom of Nepal and the full address of the company's office located at such place. Provided that a foreign company which is already operating in the Kingdom of Nepal at the time of the commencement of this act may submit the documents to be submitted by it under Sub-Section (1) to the appropriate department within three months from the date of the commencement of this act.

(2) The list to be submitted under Clause (d) of Sub-Section

(1) shall contain the following particulars :

- (a) If individuals their full name, surname, address, nationality and occupation, and
- (b) If a corporate body, its incorporated name, head office, address and the name address and nationality of each of its directors.

(3) In case any amendment or alteration is subsequently effected in any document submitted by any foreign company under Sub-Section (1), it shall notify the appropriate department accordingly within thirty-five days from the date of such amendment or alteration.

(4) The document duly submitted by any foreign company under Sub-Section (1) or the notice submitted by it under Sub-Section (3) shall be registered by the appropriate department on payment of the fee prescribed in Sub-Section (5).

(5) While registering the company after documents mentioned in Sub-Section (1) are submitted, the appropriate department shall charge registration fee not exceeding five thousand rupees from the foreign company, as in the case of a newly incorporated company under Section and in the case of registration of notices, it shall charge a fee of five rupees each. Provided that the appropriate department may, if it so deems appropriate, refuse to register any company under this Section.

139. Maintenance and Audit of Account of Foreign Companies

(1) Every foreign company registered under Sub-Section 138 shall, like a company incorporated under this act, prepare a balance sheet and a profit and loss account every year and present them at its general meeting. It shall send three copies of the balance sheet and profit and loss account either in Nepali or in English to the appropriate department.

(2) The provisions contained in Chapter 7 and 8 of this act shall also be applicable to the foreign companies to the extent to which their transactions or business are conducted in Nepal.

Chapter 11 Miscellaneous Arrangements

140. Powers of His Majesty's Government to Direct the Submission of Information and Statistics

(1) His Majesty's Government may direct all companies or any particular company to furnish the prescribed information or statistics within the prescribed time-limit in respect to their respective business or position.

(2) His Majesty's Government may inspect records in the possession of the concerned company in connection with the information or statistics furnished to it in accordance with the order issued under Sub-Section (1).

141. Outgoing Official Hand Over Document to Successor

(1) Any director, managing agent, or any other official or employee of the company shall, on the expiry of his tenure of office, hand over the documents in his charge to the official or employee who is appointed to replace him or to perform his functions, within thirty-five days from the date of such expiry. In case outgoing official hands over such documents, his successor shall take charge thereof.

142. Conversion of Private Company into a Public Company

In case it is required to convert any private company into a public company by reason of its number of members exceeding fifty or for any other reason, the shareholders shall submit an application to the appropriate department. On receipt of such application, the appropriate department shall liquidate such private company and register it as a public company.

142A. Company Law Advisory Board

In case His Majesty's Government so desires, it may form a company Law Advisory Board by notification in the Nepal Rajapatra in order to provide necessary advice to the appropriate department in matters relating to the implementation of this act. The functions, duties and powers of such Board shall be as prescribed in such notification.

142B. Amalgamation of Companies

(1) One company may be amalgamated with another with the approval of the appropriate department if both companies present special resolutions to that effect in their respective general meetings or shareholders and if such resolutions are passed.

Provided that a public company shall not be amalgamated with a private company.

(2) For approval to amalgamate a company with another according to sub-Section (1), an application must be submitted to the appropriate department mentioning the following particulars, and the appropriate department may grant approval on the basis thereof :

(a) Decision of the general meeting according to Sub-Section (1).

(b) The final balance-sheet and audit report of the company which is to be amalgamated.

(c) Copies of the written consent of the creditors of both companies.

(d) Valuation of the movable and immovable assets of the company which is to be amalgamated, accuracy of its assets and liabilities, and particulars of its machinery, raw materials, auxiliary raw materials, and finished goods.

(e) Decision taken by both the companies in respect to the predators and workers and employees of the company which is to be amalgamated.

(3) After obtaining the approval of the appropriate department under Sub-Section (2), all the assets and liabilities of the company which is to be amalgamated shall be deemed to have been transferred to the company which has amalgamated it with itself and the company shall be deemed to have been amalgamated from the date of receipt of such approval.

(4) The appropriate department shall record in the register of the company which has been amalgamated under Sub-Section (3) that the company through a decision of such and such date, and the concerned company shall be deemed to have been ipso facto dissolved without going through the process of liquidation.

143. Power of Appropriate Department to Issue Directives

In case the appropriate department is notified, along with evidence, that the director, managing agent, or any other administrative officer of the company has not performed or is not performing any functions as required under this act or the articles of the company, or he acted or is acting in contravention of this act or the articles of the company, it shall conduct or direct necessary investigations into the matter and then issue necessary directives to the concerned director, managing agent or officer, to perform such functions as they are required to do or to refrain from performing those functions they are prohibited to do, and it shall be the duty of the person receiving such directive to not accordingly.

143A. Bonus Shares

A company must notify the appropriate department before issuing bonus shares. In case the appropriate department has issued any directive on receipt of such notice, the company must issue bonus shares on the basis of such directives.

143B Loans to Subsidiary Companies

A public company must notify the appropriate department before granting loans to its subsidiary companies. In case the appropriate department has issued any directive on receipt of such notice, the public company must grant loans to its subsidiary companies on the basis of such directives.

143C. Share in the Form of Reward :

- (1) The promoters or directors may grant shares to any one form among themselves in the form of reward for having helped in the establishment of the company.
- (2) The shares to be granted under Sub-Section (1) shall not exceed five percent of the total issued capital.
- (3) The number of shares to be granted as reward under Sub-Section (1) must be explicitly mentioned in the prospectus of the company.

143D. Prohibition to Sell or Purchase Shares

The directors of a public limited company must not sell or purchase the shares of their on company or those of its subsidiary company in their own name or in the name of their family without informing the appropriate department in advance so long as they remain in office. In case the sale or purchase of shares carried out without furnishing such information subsequently comes to light, such shares shall be forfeited by the appropriate department.

Provided that it shall not be necessary to inform the appropriate department to sell or purchase the additional shares issued by the company or by a subsidiary company in order to increase its capital.

144. Action Taken in contravention of this Act to be Invalid

Unless otherwise provided for in this act on the articles or otherwise meant with reference to the subject or context, in case any action required to be taken under this act or the articles is not taken or in case any action which is prohibited is taken in any company or in respect to any company, such action shall be invalid.

145. Power of Appropriate Department to Amend Specimen Forms Indicated in Schedules

The appropriate department may effect necessary amendments in any specimen form contained in the Schedules, and in case any such amendment is effected, only such specimens as are so amended shall be used.

145A. Arrangement Relating to Sale or Purchase of Securities

Arrangements for the sale or purchase of the securities of the company must be made through which has acqucced permission to deal in securities.

Chapter 12 Legal Action and Penalties

146. Complaints and Actions on bases Under This Act

(1) Suits may be filed and action taken under this act only on complaints filed by the appropriate department or the director, managing agent or any other administrative officer or shareholder of the company or any other concerned persons, in respect to any matter under this act. But, even if no complaint is received from any persons in connection with cases under its jurisdiction, is mentioned in Sub-Section (2), the appropriate department may initiate action..... and take other necessary action and then made decision thereon.

(2) The power to take action on and dispose of cases relating to offences punishable under Section 147 shall vest in the concerned district court and the power to take action on and dispose of all other cases filed under this act shall vest in the appropriate department.

(3) An appeal may be filed with the Court against the decision made or order issued by the district court or the appropriate department under Sub-Section (2). Provided that in cases punishable under Section 149, no appeal shall be entertained against a decision or order of the appropriate department which involves a fine or compensation of two hundred rupees or less.

147.

Fine not Exceeding Two Thousand Rupees or Imprisonment for a Term not Exceeding Two Years or Both to be Awarded. A fine not exceeding two thousand rupees or imprisonment for a term not exceeding two years, or both, may be awarded to any of the following persons for the offences mentioned below :

(1) To any direction, managing agent or employee of the company in case he causes or attempts to cause any loss to the company or any person by inserting false particulars in any concerned documents of the company deliberately or through negligence or with malefide intentions.

(2) To any direction, managing agents or employee of the company, in case he fails to maintain or cause to be maintained accounts, records or registers and required under this act, or suppresses, conceals or damages such accounts, registers or records deliberately or through negligence or with malafide intentions, so as to cause loss to the company or any persons.

(3) To the auditor of the company in case he inserts false particulars in his report while discharging his duty or omits necessary comments while auditing the accounts deliberately negligence or with dishonest motives.

(4) To the Government Liquidator or the liquidator, in case he does not convene the meeting of creditors under Section 122 or 132 or makes payment contrary to the order or priority prescribed in Section 125, or fails to maintain accounts, records or registers under Section 123 or does not take over accounts and documents, or maintain false records or fails to submit the report which he is required to submit, or submits false report or does not hand over cash, stores or accounts to be submitted by him on the termination of his assignment.

(5) To any director, managing agent, Government Liquidator or any employee, in case he does not hand

over documents, records, cash and stores in his charge on the termination of his office or on receipt of order to liquidator the company to the person appointed to receive them, and to the latter in case he fails to receive them.

148. Power to Impose Fine Not Exceeding One Thousand Rupees

A fine not exceeding one thousand rupees may be awarded to any person committing the following offences :

- (a) To any person, in case he allots shares in contravention of the provisions of Sub-Section (1) of Section 21.
- (b) To every director of the company, in case it purchase its own shares or shares of its principal company from out of its reserves in contravention of this act.
- (c) To the person who commences or orders the commencement of business in contravention of Section 44.
- (d) To any person who takes or order action beyond the jurisdiction of the company as mentioned in Section 69.
- (e) To any person, in case he does not convene the general meeting which he is required to convene under this act, or does not prepare document to be made available to shareholders before the convening of the general meeting or fails to submit document which he is required to submit at the general meeting under Section 58.
- (f) To any person who is required to produce, hand over or furnish accounts or records when sought by the auditor, in case he fails to do so.
- (g) To the auditor, in case he fails to submit the report specified in Section 104, or does not fulfil his duty thereunder and to the liquidator, in case he does not submit the accounts and reports of the work done by him.

149. Power to Impose Fine Not Exceeding Five Thousand Rupees

Except in matters provided for in Section 147 and 148, a fine not exceeding five thousand rupees shall be awarded to any person who fails to perform any function which he is required to perform under this act, or performs any function prohibited by this act, or fails to perform any function which he is required to perform within the prescribed time-limit or in accordance with the prescribed procedure.

150. Payment of Compensation for Losses

punishable under this act or by contravening any provision of this act or the articles, he shall personally pay

compensation also for such losses.

151. Record of Fines to be Submitted

In case any person causes any loss to the company shareholder or creditor or any other person by committing any offence which is The appropriate department shall submit a record of the fines imposed by it under this act to the authority of the regional court empowered to collect fines. Such authority on his part shall collect them like arrears due to the court.

Chapter 13 Repeal and Saving

152. Repeal and Saving

(1) The 1951 company Act has been repealed.

(2) This act shall be applicable also to companies registered with the appropriate department prior to the commencement of this act.

Provided that:

(a) Section 4 and 6 shall not be applicable to such companies.

(b) The legal and other rights of the director managing agent or any other or shareholders of such company as between themselves shall not be deemed to have been prejudicially affected by anything contained in this act and shall continue as such.

(c) The functions, duties and rights and liabilities of the director, managing agent or any other officer or shareholders of such company in respect to any function or action performed or taken prior to the commencement of this act shall be regulated under the 1951 Company Act and other existing Nepal law.

(d) In case the appropriate department is satisfied that any such company is unable to carry out any provision of this act immediately, it may make arrangements to exempt such company from such provision for a period of one year from the date of the commencement of this act.