

# **Retirement Fund Act, 2042 (1985)**

## Date of Authentication and Publication

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### Amendments:

1. Income Tax Act, 2058 (2002) 2058.12.19 (1 April 2002)
2. Amending Some Nepal Acts to maintain Gender Equality Act, 2063 (2006) 2063.7.17 (3 Nov. 2006)
3. Republic Strengthening and Some Nepal Laws Amendment Act, 2066(2010)<sup>1</sup> 2066.10.7 (21 Jan. 2010)

Act Number 16 of the Year 2042 (1985)

## **An Act made to provide for the Retirement Fund**

**Preamble:** Whereas, it is expedient to provide for the Retirement Fund for the employees serving for companies, corporations and other bodies corporate;

Now, therefore, be it enacted by His Majesty King Birendra Bir Bikram Shah Dev on the advice and with the consent of the *Rastriya Panchayat*.

## **Chapter-1**

### **Preliminary**

1. **Short title and commencement:** (1) This Act may be called as "Retirement Fund Act, 2042 (1985)."

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<sup>1</sup> This Act came into force on 15 *Jestha* 2065, "*Prasati*" and the word "Kingdom" has been deleted.

(2) This Act shall come into force on such date as may be appointed by the Government of Nepal, by publishing a Notification in the Nepal Gazette.

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

- (a) "Fund" means the Retirement Fund established under Section 3.
- (b) "Employee" means any person who is in service in a company, corporation or other body corporate established pursuant to the laws in force.
- (c) "Institution" means a company, corporation or other body corporate established pursuant to the laws in force.
- (d) "Board" means the board of directors of the Fund formed under Section 6.
- (e) "General manager" means the general manager of the Fund appointed pursuant to Section 11.
- (f) "Bond" means a loan disbursed by the Government of Nepal under the Domestic Borrowings Act, 2059 (2002) and this term also includes a bond of a foreign government.
- (g) "Debenture" means a bond of loan borrowed by a company against the security or guarantee of its assets.
- (ih) "Member" means an institution depositing amounts of provident fund of its employees within the Fund.
- (i) "Salary" means only such a salary that is drawn by an employee according to the prevailing scale of the post in which he or she has a lien, in consideration for the service rendered by him or her in accordance with the conditions of service.

- (j) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules or Bye-laws framed under this Act.

## Chapter-2

### **Establishment, capital and management of the Fund**

3. **Establishment of the Retirement Fund:** At least three institutions may mutually establish a Retirement Fund by obtaining approval of the Government of Nepal.
4. **Provisions relating to application of establishment of Retirement Fund and approval:** (1) The institutions which intend to establish a Fund pursuant to Section 3 may jointly make an application, setting out the prescribed details, to the Government of Nepal.
- (2) The amount to be deducted by the institutions which make an application pursuant to Sub-section (1) for payment into the provident fund of their employees and be added thereto by them shall be at least Two Million Rupees, and more than Six Hundred Thousand Rupees shall be annually deducted in consideration for the provident fund and be paid into the Fund annually.
- (3) The Government of Nepal shall make necessary examination of an application made pursuant to Sub-section (1) and may give approval for the establishment of the Fund.
- (4) A notice of the approval given to establish the Fund pursuant to Sub-section (3) shall be published in the Nepal Gazette.
5. **Fund to be autonomous body corporate:** (1) The Fund shall be an autonomous and body corporate with perpetual succession.
- (2) The Fund shall have a separate seal of its own.

(3) The Fund may, subject to this Act and the Rules framed under this Act, acquire, use, sell or otherwise deal with any movable and immovable property, like an individual.

(4) The Fund may sue by its name and be also sued by the same name.

**6. Formation of the Board of Directors:** (1) The Fund shall have one Board of Directors to look after, direct and manage all the functions and affairs of the Fund. The Board of Directors shall exercise all such powers and perform all such duties as the Fund may have pursuant to this Act and the rules framed under this Act.

(2) The Board of Directors shall have a maximum of Seven directors, and the directors shall be appointed by the general meeting.

(3) A person who is selected by the directors from amongst themselves shall be the chairperson of the Board of Directors.

(4) The term of office of a director shall be Four years.

(5) Notwithstanding anything contained in Sub-section (2), until the provision of election of directors by the general meeting is made, the representatives of the institutions designated by the Government of Nepal from amongst the member institutions of the Fund shall be directors.

**7. Acts not to be invalid:** Even if it is subsequently discovered that any irregularity was made in the formation of the Board or that the office of any director fell vacant, any acts of the Board already done shall not be invalid by the reason only that.

**8. Meetings of the Board:** (1) The meeting of the Board shall be held at such date, venue and time as specified by the secretary at the order of the chairperson.

(2) Where at least Two directors make a request in writing, the chairperson shall call a meeting of the Board within Seven days of such a request. When so calling a meeting, a time-limit of Seven days shall be given.

(3) No meeting of the Board shall be held unless it is attended by the chairperson and at least other Three directors.

(4) Meetings of the Board shall be presided over by the chairperson, or in the absence of the chairman, by a director selected by the directors from amongst themselves.

(5) The decision of a majority in the meeting of the Board shall be binding, and, in the event of a tie, the chairperson may exercise the casting vote.

(6) Other Rules of procedures of the meetings of the Board shall be as determined by the Board itself.

9. **Relation between the Government of Nepal and the Fund:** In making correspondences by the Fund with the Government of Nepal, such correspondences shall be made through the Ministry of Finance.
10. **To be a member of the Fund:** Any institution may be a member of the Fund in such a manner as to deposit the amounts of provident fund of its employees with the Fund.
11. **Appointment of general manager:** The Fund shall appoint one general manager as the chief administrative officer for the operation of the affairs of the Fund.

## Chapter-3

### Meetings of the Fund

**12. General meetings of the Fund:** (1) The chairperson of the Board shall call a preliminary general meeting of members of the Fund within Twelve years of the date of approval obtained to establish the Fund.

(2) The general meetings of the Fund shall be as follows:

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

(3) There shall be sent a notice specifying the place, date, time and agenda of meeting to every member, in advance of at least Twenty One days to hold the annual general meeting, and in advance of at least Fifteen days to hold the extra-ordinary general meeting of the Fund.

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

- (a) If the shareholders representing at least Two Thirds of the total members who are entitled to vote at the general meeting attend and vote in favour of taking a decision on any matter, or
- (b) If the matter was already notified for being transacted in any general meeting which has been adjourned.

**13. Annual general meeting:** (1) The Fund shall hold its first annual general meeting within One year after holding its preliminary meeting, and thereafter it shall hold the annual general meeting every year within Six months after the expiry of its financial year.

(2) If any Fund fails to call the annual general meeting pursuant to Sub-section (1) and any member makes an application setting out that mater, the Government of Nepal may cause to be held the annual general meeting; and even if any such application is not made, the Government of Nepal shall cause to be held such a meeting within Two months after the expiration of the period as referred to in Sub-section (1).

**14. Matters to be presented in annual general meeting:** (1) The Fund's audited profit and loss account and balance sheet of the previous year shall be presented in the annual general meeting of the Fund.

(2) If at least Fifteen per cent of the total number of members of the Fund shall so desire, they may, by submitting an application to the directors prior the issue of a notice under Sub-section (3) of Section 12, cause any matter to be presented at the annual general meeting.

(3) In addition to the matters presented pursuant to Sub-sections (1) and (2), accounts of the Fund, annual report of the Fund relating to is documents, reports of the auditor and the directors, appointment of the auditor and directors, interest or other financial facilities submitted by the Board of Directors for distribution to the employees, meeting allowances of directors and other necessary matters shall be discussed at the general meeting.

**15. Extra-ordinary general meeting:** The Board of Directors may convene an extra-ordinary general meeting if it deems necessary.

**16. Discussion and decision:** (1) The chairperson of the Board shall chair the general meeting; and in the event of absence of the chairperson of the Board, the shareholder selected from amongst the present shareholders shall chair the meeting.

(2) Each matter to be discussed at the general meeting shall be presented in form of a resolution.

(3) Every matter to be put to vote shall be made by a majority of the members who attend and vote at the general meeting. In the event of a tie, the person chairing the meeting may exercise the casting vote.

**17. Quorum:** (1) No general meeting may be held unless it is attended by Fifty percent members of the total number of members of the Fund.

(2) If the meeting cannot be held failing the presence of members in the number as referred to in Sub-section (1), the meeting shall be called by giving another notice of at least Seven days, and the general meeting may be held if it is attended by at least One-Thirds members.

## **Chapter-4**

### **Provisions relating to deduction of fund**

**18. Mandatory deduction of money from salary of employees:** (1) An institution shall, in consideration for the provident fund, deduct the fund amount by at least Ten percent from the monthly salary of its employees, add thereto such amount as many not be less than that deducted amount and pay the same to the Fund.

(2) The amount of fund deduction shall be deducted compulsorily. The consent of the concerned employee shall not be required for such deduction.

**19. Acts to be done by the Fund after payment of money to the Fund:**

(1) After the payment of money to the Fund pursuant to Section 18, the amount so paid by the name of every employee shall be paid to the account of that employee.

(2) Every year after the closure of the year, the Fund shall enter into an endorsement book details setting out, *inter alia*, the amounts deducted every month from the salary of the employee, amount added by the office and other deductions and additions and interest accrued on the amounts so paid and update the same.

(3) The Fund shall give an identity card to every employee.

(4) The Fund may prescribe fees for the giving of the identity card or endorsement book pursuant to Sub-sections (2) or (3) or giving another identity card in the event of loss, deface or torn out of such an identity card or endorsement book.

**20. Prohibition on withdrawal of moneys:** No employee may withdraw amount deposited in the Fund in the name of that employee while he or she is in service.

**21. Power of the Fund to do acts for the welfare of employees:** The Fund may, to the extent permissible by its resources, do all acts for the enhancement of welfare and facilities of the employees and their families.

**22. Interest and other amounts to be provided:** (1) The Fund shall provide interest on the amount deposited by the name of an employee at such a rate as may be determined from time to time.

(2) The Fund shall determine dividends to be provided to employees on the basis of the amount remaining upon the interest to be provided to the employees, capital expenditure and reserve fund out of the dividends or

interest receivable from the investment of any amount held in the custody of the Fund.

(3) Even though an employee is relieved of office for any reason, the Fund shall continue to provide interest on the amount deposited in the Fund by the name of that employee unless and until the amount is withdrawn from the Fund.

**23. Fund deduction to be refunded:** (1) Any employee shall get refund of lump sum of all amounts including the principal and interest deposited in his or her account immediately when he or she is relieved of service for any reason. If he or she dies, his or her nominee or nominees shall obtain the amounts according to the will. If he or she has not nominated any person or if his or her nominee is also dead, the surviving relative of the employee shall receive such amounts and if there are more than one such surviving relative in the same order,<sup>2</sup> they shall receive such amounts on the *pro rata* basis:

- (a)<sup>3</sup> Husband or wife living in the same family;
- (b) Son, daughter, widow daughter-in-law living in the same family;
- (c) Father, mother (father-in-law, mother- in-law in case of a married woman) living in the same family;
- (d) Grandfather grandmother to be taken care of by oneself and grandson, granddaughter on the line of the son;
- (e) Husband or wife living separately;

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<sup>2</sup> Inserted by Amending Some Nepal Acts to maintain Gender Equality Act, 2063.

<sup>3</sup> The Clauses (a) to (o) have been substituted for the existing Clauses (a) to (j) by Amending Some Nepal Acts to maintain Gender Equality Act, 2063.

- (f) Son, daughter, widow daughter-in-law living separately;
- (g) Father, mother living separately;
- (h) Step son, daughter living in the same family;
- (i) Step mother living in the same family;
- (j) Elder and younger brother and elder and younger sister living in the same family;
- (k) In case of a married woman, father-in-law, mother-in-law living separately;
- (l) The grandson and unmarried grand-daughter in the line of the son;
- (m) The step mother living separately;
- (n) Step son, daughter living separately;
- (o) In case of a married woman, elder and younger brother-in-law and sisters-in-law living in the same family;
- (p) Nephew, niece living in the same family;
- (q) Uncle, widow aunt, elder sister-in-law, younger sister-in-law;
- (r) Elder and younger brother and elder and younger sister living separately;
- (s) Grandfather, grandmother, granddaughter-in-law, nephew, niece living separately;
- (t) The person taking of the employee being close to him or her until the last hour.

(2) If a person nominated by an employee dies or if the employee so wishes despite he or she is alive, the employee may nominate another person in his or her stead or alter the contents set forth in the letter of nomination.

(3) If, after the discontinuation of the service of an employee, the employee does not show up to get refund of the Fund amount until Three years of the discontinuation of service or does not give any notice to the Fund in relation to the refunding, his or her nominee shall be entitled to his or her Fund amount. If even the nominee does not show up to receive that amount until Two years Nine months after the date on which he or she may get it, the Fund shall arrange to publish a notice for information to the people generally. If the nominee does not show up to receive the amount even after the publication of the notice, the heir to the employee as referred to in Sub-section (1) shall be entitled to get that amount.

(4) Notwithstanding anything contained in Sub-section (1), the Fund shall deduct and recover such principal borrowed by an employee from the Fund and interest accrued thereon as may be due and payable by the employee.

(5) Notwithstanding anything contained in Sub-section (3) of Section 22, if a person who is entitled to have the refund of the deposited amount even until Six years after the original date on which such amount has stood refundable, the amount shall be deposited in a separate account, and after the amount is so deposited in a separate account, no interest shall be payable on that amount.

**24. To give notice to the Fund about the condition of employee:** (1) In the event of fresh appointment, transfer and promotion of employees, the concerned institution shall give a notice of such appointment, transfer and promotion to the Fund immediately.

(2) If any employee is to get retirement due to the age bar, the concerned institution shall, in advance of Six months of retirement, give a notice thereof to the Fund, setting out the date on which the employee gets retirement.

(3) If any employee gets retirement or is relieved of office for any other reason, the institution shall give a notice to the Fund, also setting out the date of getting retirement or relieving of office for the purpose of refunding the Fund deduction amount of the employee.

- 25. No relation of institution with the Fund:** If any institution which is a member of the Fund is dissolved, such an institution shall have no relation with the Fund from the date of such dissolution, and the employees of such a dissolved institution shall be deemed to have been relieved of the service of that institution, for the purposes of this Act.
- 26. Transfer of capital:** If any institution which is a member of any one Fund wishes to be a member of another Fund, the institution shall give a notice to the then Fund in advance of at least Six months, requesting for the transfer of capital to the Fund of which it intends to be a member. If a notice is so received, the then Fund shall transfer all accounts of the concerned institution held with it to the other Fund.
- 27. Security of fund:** Notwithstanding anything contained in the laws in force, the following matters shall be governed by the following:
- (a) No coparcener of an employee shall, in consideration for his or her partition share, be entitled to the moneys deposited with the Fund in the name of the employee. Despite a judgment by a court, no creditor shall be entitled to claim the moneys deposited with the Fund in the name of the employee. No moneys deposited with the Fund in the name of the employee shall be confiscated for any

offences including those punishable with confiscation of entire property pursuant to the laws in force. Such moneys shall not also be deducted or confiscated also for any government dues or arrears.

- (b) No income tax shall be levied on the moneys deposited with the Fund in the name of any employee and on profits of the Fund and on the moneys deposited by the employee upon drawing the same from the Fund out of the moneys so deposited with the Fund.
- (c) In distributing the assets of a company in which any amount of the Fund has been invested or which has borrowed a loan from the Fund, upon the liquidation of the company, the Fund shall have the first and foremost right in the assets of such a company for the investment by the Fund, dividends thereon and outstanding and recoverable amount of the loan. Even in cases where any amount of the Fund is due and recoverable from any other person and such person becomes insolvent, the Fund shall have the first and foremost right in the assets of such a person for the amount to be recovered by the Fund. Only after the recovery of the amount due and payable to the Fund, other persons shall have the right in the remaining assets of such a company or person.
- (d) If any person fails to pay in time such advance, loan or interest as required to be paid to the Fund in accordance in the deed, the Fund may recover the amount of the Fund by foreclosing and auctioning the house and land or other property furnished by such a person as a security, usufruct or wealth guarantee in favor of the Fund after Thirty Five days of the expiration of that time. If no one buys such house and land on the auction sale, the Fund may take over the ownership of that property. In such a circumstance, the government offices responsible for maintaining the records of such property or

recovering the land revenue thereon shall do action whatever required, including transmission, on the records maintained in these offices.

- (e) After the Fund has taken a property as a security, usufruct or wealth guarantee (*Jamanipatra*) pursuant to Clause (d), the borrower shall not furnish such a property as a security in favour of, or usufruct it or otherwise transfer his or her title in it, to another person, and if the registration making office is requested by the Fund to withhold that property, the office shall withhold it.
- (f) In lending a loan or advance against the security of an immovable property to any person, the Fund may specify the repayment period of more than Five years.

**28. Acts that may be done by the Fund:** The Fund may do the following acts for the mobilization of its balance/inventories and assets:

- (a) To make investment in cash certificates or fixed deposits of banks within Nepal;
- (b) To lend moneys to any industry or body corporate, on such terms and interest as specified by the Fund;
- (c) To operate housing projects and sell, distribute or rent houses and lands to the employees;
- (d) To construct buildings and rent them;
- (e) To make investments in appropriate sectors, taking into consideration of the security of the Fund;
- (f) With the approval of the *Nepal Rastra Bank* (Central Bank), to do acts of a commercial bank, insurance, financial institution, do hire purchase related business, purchase the shares or debentures of a

body corporate and public company and lend moneys against the security of shares;

- (g) To do all such other acts as may be incidental in the course of doing acts as required to be done under this Act.

- 29. No fee to be levied:** No kind of tax other than income tax<sup>4</sup> or revenue stamp fee that is leviable in relation to a deed to be executed while making a loan or advance to an employee by the Fund and on the deed of security, usufruct or guarantee, in consideration for the loan or advance, and registration fee leviable while registering such a deed in accordance with the laws in force.

## Chapter-5

### Reserve fund and audit

- 30. Reserve fund:** (1) The Fund shall establish a separate fund by the name of reserve fund, and at least Twenty percent amount of the new profits of each year shall be paid to the reserve fund.

(2) The Fund shall not be entitled to provide dividends or other economic benefits until it recovers capital expenses (preliminary expenses and office expenses which do not seem to be tangible property, suspicious (*Sankaspad*) loans, depreciation of property and also such other expenses as may be casual according to the need of the Fund).

- 31. Audit of the Fund:** (1) The accounts of the Fund shall be audited by the auditor appointed by the Auditor General of Nepal.

(2) The auditor shall present his or her report on the annual profit and loss account, balance sheet and other accounts at the general meeting and such a report shall state whether the balance sheet has been prepared

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<sup>4</sup> Amended by Income Tax Act, 2058.

correctly setting out all necessary matters and in a manner to reflect the actual financial condition of the Fund or not, and in cases where any explanation or information has been sought from the Board, whether such explanation or information has been given in a satisfactory manner or not.

## Chapter-6

### Miscellaneous

32. **Deposit of amounts set aside for gratuity and pension:** Any institution which is a member of the Fund shall deposit in the Fund such amounts as set aside by it for the purpose of providing gratuity or pension to its employees in accordance with its rules.
33. **Saving against loss and damage:** The director, general manager or other employee of the Fund shall not be held individually liable for any loss or damage caused from any act done by them in the course of performing their duties in accordance with this Act, except for any act done with ulterior motive or in bad faith deliberately.
34. **Dissolution:** (1) If the Board is of the opinion that the Fund has to be dissolved for any reason, the Board shall submit to the general meeting a report setting out the reason for the same, and if a Two-Thirds majority of the general meeting decides to dissolve the Fund, the Fund may be dissolved with the approval of the Government of Nepal.
- (2) In the event of dissolution of the Fund pursuant to Sub-section (1), the institutions which are members of the Fund shall bear the liabilities of the Fund.
35. **Inspection and direction:** (1) The Fund shall submit to the Nepal Rastra Bank the statements of its financial situation of every Six months within One month of the expiration of that period.

(2) If so deemed necessary for public interest, the Nepal Rastra Bank may make necessary inspection and inquiry of the financial transactions of the Fund and may give necessary direction. It shall be the duty of the Fund to abide by such direction.

36. **Power to frame Rules:** (1) The Government of Nepal may frame Rules in order to accomplish the objectives of this Act.
37. **Power to frame Bye-laws:** The Fund may frame necessary Bye-laws, without being prejudicial to this Act or the Rules framed under this Act.
38. **Removal of difficulties:** If there arises any difficulty with the implementation of this Act, the Government of Nepal may issue any order by publishing a Notification in the Nepal Gazette.
39. **The laws in force to prevail:** The matters set forth in this Act shall be governed by the same and the other matters shall be governed by the laws in force.