

Companies (First Amendment) Act, 2074

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Basics about Amendments

- ▶ Name of the Act - Companies (First Amendment) Act, 2074 - which was recently passed by the parliament
- ▶ Came into force immediately, hence amendment came into force on 2074/01/19 (May 2, 2017).
- ▶ Previous Amendment - The Act Amending Some Nepal Acts, 2064 (2064.5.9) (26 August 2007)

Definitions

- ▶ Definition added - “*Electronic Recording*” - all the papers submitted by the company and to the company
- ▶ Definition of “*Office*” is altered to include branches of the Office of the Company Registrar (“OCR”)

Amendments - Company Registration Approval Process

- ▶ S4(1)
 - ▶ Electronic process for name approval
 - ▶ Electronic Filing - after the acceptance of proposed Name of Company
- ▶ S4(2)
 - ▶ Registration related Documents Filing through Computer System

Amendments - Company Registration Approval Process and Power of Refusal

- ▶ S5(1)
 - ▶ Either registered within 7 days or forward queries with reason within three days of non registration
- ▶ S5(1)(a)
 - ▶ Electronic Signature is Possible
- ▶ S6(1)(a)
 - ▶ Identical with trademark is added for condition of refusal

Amendments - Various

- ▶ S9(1) - Number of shareholder of Pvt. Ltd. - maximum 101
- ▶ S12- To be registered as Public company
 - ▶ Company having paid up capital 50 million (5 crore) with telecommunication business - Recent Pvt. Ltd. to be converted within a year
 - ▶ *As per Telecommunication Act 2053, "Telecommunications Service" means a service relating to the acts of the conveyance or reception of any sounds, signs, signals, writings or images by the wire, radio, optical or other electromagnetic systems whether or not such signs, signals, writings, images, sounds or intelligence have been subjected to rearrangement, computation or other change in any manner for their emission, transmission or reception.*
- ▶ S(13) - Conversion to Public from Private
 - ▶ desire base conversion - By adopting special resolution

Amendments - Various

- ▶ S16 (4)
 - ▶ Any employees can be authorised instead subordinate of registrar.
- ▶ S 28 (4) -Amount to be Refunded with Interest
 - ▶ When fund for refund is insufficient due to being late for allotment, then directors (added) along with promoters are responsible instead promoters only
- ▶ S29 - Share in Premium - Previously “a company”
 - ▶ Public Company - Three years profit provision is taken out - subject to the terms and condition imposed by Securities Laws
 - ▶ Private Company - Deemed Public - Subject to Solvent and AGM Approvals

Amendments - Various

- ▶ S51-
 - ▶ 30 days prior AGM and preparation is 21 days prior AGM
 - ▶ Condition Added - if investment is made in share or debenture than registration number and amount
 - ▶ Every year to be forwarded irrespective of changes or not in case company doing AGM
 - ▶ Within 6 months of completion of fiscal year in case company not doing AGM
- ▶ S 53 - call for share amount - two notice instead of three notice
- ▶ S62 (1) - Share purchase by Holding and subsidiary (added) - No loan or financial assistance can be given to other

Amendments - Various

- ▶ S68 -In case of force majeure, directors can take part with voting right, in AGM through Video conference or other similar technologies
- ▶ S 75 - Number can be taken/counted if attended through video conference or similar
- ▶ S76- Provision of AGM is applicable to Private Company doing AGM - Seems AoA is to be amended if has other provision than S76.

Amendments - Various

- ▶ S80 -
 - ▶ Private also to file AGM minutes
 - ▶ Filing through Electronic means
- ▶ S 82 -
 - ▶ If 10 percent of paid up value or 25% shareholder may make application than BoD cause to have EGM to be within 30days.
 - ▶ OCR can cause to have EGM with the prescribed period
- ▶ S86-
 - ▶ Pvt Ltd BoD as per AoA but can't have more than 11
 - ▶ Public Company with female shareholders must have one female Director

Amendments - Various

- ▶ S89 - Disqualification condition added - if does not pay the fine as per Section 81
- ▶ S 92 - Section 92 declaration - Director to submit in 15 days instead of 7 days
- ▶ S93 -
 - ▶ Significant transaction - added firm, companies or corporate bodies having substantial shares of substantial shareholders
- ▶ S98
 - ▶ If 25% directors call for BoD meeting, Chairman to call with in 15 days (was 7 days)

Amendments - Various

- ▶ S101 - Prohibition to grant loan - added officers of subsidiary and substantial shareholder of main company in stead of shareholders
- ▶ S 104 - Any papers with signature of the officers or authorised person is acceptable and mandatory to the company
- ▶ S105 -
 - ▶ Donation is increased from 50,000 to 1 lack subject to it does not increased 1% mean of three years profit's
- ▶ S121
 - ▶ OCR deputing inspector - should be without having self interest or association

Amendments - Various

- ▶ S127 - Appointment of Liquidator and Auditor - Added
 - ▶ Provision of firing of liquidator by same procedure if against the code of conduct, companies interest and other prevalent laws
 - ▶ However, approval of authority needed if grounds is code of conduct
 - ▶ Doctrine of Natural justice before firing
 - ▶ Same authority to appoint another liquidator
 - ▶ No liquidator more than one company at a time
- ▶ S 136 A - Special provision pertaining to cancellation of company registration
 - ▶ Seemingly - any company other than those fulfilled compliances - 0.5% of paid up capital or total fine as per 81, whichever is less
 - ▶ Application within two years of the effective date of the said provision

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 - ▶ Application within two years of effectiveness of this clause
 - ▶ Procedure of S136 to be followed

Amendments - Various

- ▶ S145 - One addition to consensus agreement related provision
 - ▶ Matters relating to company operation, management, shareholder's voting rights or any other special benefits, rights or inter-relation between shareholders
- ▶ S 159 - limitation on Case filing
 - ▶ 2 years from cause of action - in case no other limitation is prescribed
 - ▶ Take a note - "Limitation" is different than "Laches"

Amendments - Various

- ▶ S160- Addition - 50 thousand or 2 years imprisonment or both
 - ▶ Not maintaining proper Book of account is added in maintaining books of accounts
 - ▶ Company or officers - preforming against the approved objective
 - ▶ Inspector, under S121, supplying falls report
- ▶ S162- not exceeding 20,000
 - ▶ Changed the word “Officers” instead of Directors, Managing Directors, Managers, Company Secretary

Amendments - Various

- ▶ S167- Company not distributing profit -
 - ▶ Administrative cost can't be more than 25% of total expenditures
- ▶ S168- To become a member of Company advisory board - Bachelor degree enough - instead Master degree
- ▶ S174 - word “record” under the control of employee is added while handing over the charges to the successor

Amendments - Various

- ▶ S176 - Restriction on transaction between companies - not more than - 60% of paid up capita and free reserve or 100% of the free reserve (whichever is higher) give guarantee or make investment of securities of another company
 - ▶ Not applicable - financial insitutuion, insurance, objective of buy and sale securities or investment or private company not borrowing loan - company proving infrastructure facilities - investmen of the holding company to fully subsidiary company etc holding giving money, gurantee etc

Amendments - Various

- ▶ S 177 - Amalgamation of two not profit distributing company - added new provision - *mutatis mutantis* - required changes is applicable - and so made
- ▶ S184 - Deleted - “Changes in registered office with prior notice to OCR” - Seems AoA/MOA is to be amended
- ▶ S 187 (a) - Added - declaration of company for fulfilling the legal commitment relating to prevention of money laundering and financial investment on terrorist activities

▶ **THANK YOU !!!**