

Recovery of Debts of Banks and Financial Institution Act, 2058 (2002)

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1. Recovery of Debts of Banks and Financial Institutions (First Amendment) Act, 2063

Act number 16 of the year 2058 (2002)

**An Act made to provide for recovery of Debts of banks and financial
institutions**

Preamble: Whereas, it is expedient to make provisions for the recovery of principal and interest of debts recoverable from borrowers by trying and settling cases relating to recovery of debts of banks and financial institutions in a speedy and prompt manner; Now, therefore, be it enacted by Parliament in the first year of reign of *His Majesty the King Gyanendra Bir Bikram Shah Dev*.

Chapter-1

Preliminary

1. **Short title and commencement:**(1) This Act may be called " Recovery of Debts of Banks and Financial Institutions Act, 2058(2002)".

(2) This Act shall commence on such date as may be appointed by Government of Nepal, upon a notification in the Nepal Gazette.*

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

* It came into force on 2060.4.1 by a notification published in the Nepal Gazette dated 2060.3.2.

- (a) "Bank and financial institution" means a bank and financial institution as referred to in Section 3.
- (b) "Tribunal" means the tribunal established pursuant to Section 4.
- (c) "Member" means a member of the tribunal established pursuant to Section 4, and this term also includes the chairperson of the tribunal.
- (d) "Appellate tribunal" means the appellate tribunal established pursuant to Section 8.
- (e) "Appeal hearing authority" means the person appointed pursuant to Section 9.
- (f) "Debt" means principal and interest of a debt lent by a bank or financial institution to a borrower with or without security, mortgage of a movable or immovable property or other necessary security or guarantee, and this term includes arrears due and receivable from the off balance sheet transactions or fee, commission and interest chargeable therefor.
- (g) "Borrower" means a person, firm, company or corporate body established pursuant to the prevailing law who borrows a debt from a bank or financial institution, and this term includes a guarantor.
- (h) "Debt recovery officer" means the officer specified pursuant to Section 28.
- (i) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

3. Banks and financial institutions to which provisions of the Act apply:

The provisions of this Act shall apply to cases relating to recovery of debts of the following banks and financial institutions.

- (a) Agricultural development banks established under the Agricultural

Development Bank Act, 2046(1967),

- (b) Commercial banks established under the Commercial Bank Act, 2031(1974),
- (c) Nepal Industrial Development Corporation established under the Nepal Industrial Development Corporation Act, 2046 (1989),
- (d) Such other financial institutions as may be specified by Nepal Rastra bank from time to time.

Provided, however, that the provisions of this Act shall not apply to the recovery of a debt of which principal is less than five hundred thousand rupees.

Chapter-2

Establishment and Formation of Tribunal and Appellate Tribunal

4. **Establishment and formation of tribunal:** (1) Government of Nepal may, by a notification in the Nepal Gazette, establish the debt recovery tribunal, as per necessity, in order to originally try and settle cases relating to recovery of debts of banks and financial institutions.

(2) The seat and territorial jurisdiction of the tribunal to be established under Sub-section (1) shall be as specified in such a notice.

(3) The tribunal shall have the members as follows.

- (a) Law member,
- (b) Banking member, and
- (c) Accounts member

(4) The law member shall be the chairperson of the tribunal and, in his/her absence; the banking member shall chair the tribunal.

(5) Notwithstanding anything contained elsewhere in this section, Government of Nepal may, by a notification in the Nepal Gazette, add territorial jurisdiction of the tribunal and give power to originally try and settle cases relating to debt recovery.

5. **Appointment of member:** Government of Nepal shall, by a notification in the Nepal Gazette, appoint the member from amongst the persons having possessed qualifications as referred to in Section 6.

Provided, however, that while appointing the banking member and the accounts member, Government of Nepal shall consult Nepal Rastra Bank.

6. **Qualifications for member:** One has to possess the qualifications as follows in order to be member:

- (a) For the law member, one who is incumbent or has already become or is qualified to become a judge of the District Court,
- (b) For the banking member, one who, having possessed at least bachelor's degree in economics or commerce, has at least ten years of experience in a post of at least Class-Two officer level post in a bank or financial institution established pursuant to the prevailing law.
- (c) For the accounts member, one who, having possessed at least bachelor's degree in commerce or passed chartered accountancy or examination equivalent thereto, has obtained the auditor certificate of at least "b" class and gained at least ten years of experience in auditing of the bank or financial institution sector.

7. **Tenure of a Member:** A member shall hold office for a period of five years from the date of his/her appointment to the post and may be re-appointed.

8. **Establishment of Appellate Tribunal:** (1) For purposes of hearing appeal against a decision made by the tribunal under this Act, Government of Nepal

may, by a notification in the Nepal Gazette, establish the debt recovery Appellate Tribunal, as per necessity.

(2) In establishing the Appellate Tribunal pursuant to Sub-section (1), the seat and territorial jurisdiction of such appellate tribunal shall also be specified.

(3) Government of Nepal may, by a notification in the Nepal Gazette, so specify that any Appellate Tribunal may hear appeal against an order or decision made by a tribunal outside its territorial jurisdiction.

9. **Appointment of appeal hearing authority:** Government of may, by a notification in the Nepal Gazette, appoint any person who is an incumbent judge, or has already become or is eligible to become judge, of the Appellate Court to the post of Appeal Hearing Authority of the Appellate Tribunal.
10. **Tenure of appeal hearing authority:** The appeal hearing authority shall hold office for a period of five years from the date of his/her appointment to the post and may be reappointed.
11. **Remuneration and facility:** The remuneration and facilities and other conditions of service of the member and the Appeal Hearing Authority shall be as prescribed.
12. **Vacation of seat:** (1) The member or the Appeal Hearing Authority shall cease to hold his office in the following circumstances:-
 - (a) If the tenure expires pursuant to this Act,
 - (b) If the resignation tendered from the office is accepted by Government of Nepal,
 - (c) If one is removed by Government of Nepal on ground of bad conduct or lack of competency.(2) Government of Nepal shall, prior to issuing an order to remove

him/her from office pursuant to Clause (c) of Sub-section (1), give him/her a reasonable opportunity to defend himself.

13. **Fulfillment of vacant post:** If the post of chairperson or Appeal Hearing authority falls vacant under Section 12 or for any other reason, the post so fallen vacant shall be filled in accordance with the procedures referred to in Section 5 or Section 9 for the remainder of his/her term.

Chapter-3

Jurisdiction and Procedures of Tribunal and Appellate Tribunal

14. **Functions, duties and jurisdiction:** (1) Following the establishment of the tribunal pursuant to this Act, the tribunal shall have powers to originally try and settle cases on recovery of debts of banks and financial institutions under its jurisdiction.

(2) The three members shall collectively exercise jurisdiction of the tribunal. Majority opinion shall be deemed to be a decision of the tribunal.

(3) Notwithstanding anything contained in Sub-section (2), if two members including the law member are present, cases may be tried and settled. Other actions except deciding a case or issuing a final order may be taken if two members other than the law member are present.

(4) If unanimity is not made while trying and settling a case in presence of two members pursuant to Sub-section (3), the case shall be submitted for action and settlement in presence of the absent member, as well.

(5) If majority is not there even on submission pursuant to Sub-section (4), it shall be written to the appellate tribunal for a way-out in respect of such a case.

(6) The appellate tribunal shall, following its establishment, have the

final power to hear appeal against any order issued by the tribunal under its jurisdiction.

(7) Notwithstanding anything contained in this Act, a bank and financial institution may, in respect of a debt recoverable by it, file a petition on recovery of the debt only in respect whereof the following conditions are fulfilled.

- (a) Ample discussions and activities were held and carried out with the borrower to settle, or cause to be settled, the debt.
- (b) The bank and financial institution took adequate action on the recovery of debt but the debt could not be recovered.

15. Filing of petition with tribunal: (1) If a bank or financial institution fails to recover any amount recoverable from the borrower, it has to file a petition, accompanied by the prescribed fees, in the prescribed format, to the tribunal within the following time limit so as to have such amount recovered.

- (a) In the case of debts already matured at the time of commencement of this Act, [∇]within five years from the date of commencement of this Act.
- (b) In the case of debts matured after commencement of this Act, [∇]within four years from the date of such maturity.

(2) In filing a petition pursuant to Sub-section (1), the concerned bank or financial institution has also to pay an amount to be set by 0.25 per cent of the amount claimed by it to the tribunal in advance as the debt recovery fee.

[∇] Amendment by First Amendment .

[∇] Amendment by First Amendment .

(3) No later than fifteen days of the date of receipt of the petition as referred to in Sub-section (1), the tribunal has to issue a 15-day summons to the defendant to file a note of defense in order to defend him/her accompanied by proofs and evidence, and the defendant has to file the note of defense within that time limit.

Provided, however, that if the defendant fails to file a note of defense within the time limit because of occurrence of a circumstance beyond control and makes a petition within 15 fifteen days thereafter, setting out reasons therefor, and if the contents of such application appear reasonable, the tribunal may extend the time limit not exceeding fifteen days.

- 16. Power to issue interim orders:** (1) If, in respect of a case under its consideration, the tribunal thinks, upon a petition of the party, that it is necessary to so withhold the security furnished for borrowing the debt or the movable or immovable property owned or possessed by, or title to which belongs to, the guarantor of the borrower as to prevent such security or property from being transferred, transmitted or sold, the tribunal may issue an interim order to the concerned office to withhold such property until another order is issued.

(2) It shall be the duty of the concerned office to observe the order as referred to in Sub-section (1).

- 17. Period for trying and settling cases:** The tribunal has to try and settle a case filed under this Act no later than one hundred fifty days from the date of submission of a note of defense where the note of defense is filed and from the date of expiration of the time limit for the filing of a note of defense where such note is not submitted.

Provided, however, that no case shall be tried and settled finally until the time limit allowed for extending the expired time limit pursuant to Sub-section (3) of

Section 15 is expired.

- 18. To read out decision:** (1) Decision made by the tribunal has to be read out to the present parties or their attorneys and a deed has to be got executed by them that they have heard the decision.

(2) If the concerned parties or their attorneys are not present at the time of making decision, information of decision has to be sent to them within seven days of making decision.

- 19. Appeal:** (1) A party who is not satisfied with the decision made by the tribunal may file an appeal, accompanied by the prescribed appeal fee, in the prescribed format, to the concerned Appellate Tribunal within fifteen of receipt of duplicate copy of the decision.

(2) No later than seven days of registration of the appeal as referred to in Sub-section (1), the Appellate Tribunal has to give a thirty-day time limit to the defendant to file a note of defense, accompanied by proofs and evidence, for his/her defense; and the defendant has to file the note of defense within that time limit.

Provided, however, that if the defendant fails to file a note of defense within that time limit because of occurrence of a circumstance beyond control and makes a petition, setting out reasons therefore, the Appellate Tribunal may extend a time limit of fifteen days.

- 20. Compromise:** (1) Notwithstanding anything contained elsewhere in this Act, if both plaintiff and defendant, with a view to compromising any case yet to be tried and settled pursuant to this Act, make an application on compromise to the tribunal or appellate tribunal, and both parties agree to enter into compromise after hearing the contents of the application read out to them and understanding the meanings and consequences thereof made well known to them, the tribunal or appellate tribunal may have compromise irrespective of

the stage of case proceedings.

(2) For having compromise pursuant to Sub-section (1), each of the plaintiff and the defendant has to pay half the compromise fee in a sum to be set by 0.50 percent of the claimed amount to the tribunal. The fee chargeable for compromise required to be so paid by the plaintiff shall be deducted from the debt recovery fee paid by him/her in advance, pursuant to Sub-section (2) of Section 15, and collected accordingly.

(3) The tribunal so making compromise has to order the debt recovery officer to implement the compromise made pursuant to Sub-section (1).

21. Implementation of decision: (1) After reading out a decision pursuant to Section 18, the tribunal has to issue an order in the name of the debt recovery officer to implement the decision, after receipt of decision of the appellate tribunal where appeal has been filed against that decision and after expiration of the time limit for appeal where appeal has not been filed.

(2) The tribunal may, in issuing an order pursuant to Sub-section (1), also specify a period for the implementation of decision.

22. Deposit to be furnished for appeal: In making appeal pursuant to Section 19, the borrower has to furnish cash deposit in a sum that is thirty per cent of the amount held recoverable by a decision made by the tribunal.

23. Period for settling appeal: The Appellate Tribunal has to finally settle an appeal made under this Act within ninety days from the date of submission of a note of defense of appeal where such note of defense has been submitted and from the date of expiration of the time limit for submission of a note of defense where such note of defense has not been submitted and send information thereof to the concerned tribunal no later than fifteen days from the date of final settlement.

24. Powers and procedures of tribunal and appellate tribunal: (1) In trying and settling cases filed under this Act, the tribunal and the appellate tribunal may determine their procedures on their own, subject to this Act or the Rules framed under this Act.

(2) In trying and settling cases filed under this Act, the tribunal or the Appellate Tribunal shall have the same powers including to issue summons, summon presence of petitioner, defendant, witness, administer oath, take deposition, examine proofs, evidence and necessary documents or statements, require submission of documents, require furnishing of security and impose punishment as the court of law has under the prevailing law.

Chapter-4

Procedures of debt recovery

25. Procedures of debt recovery: (1) Upon receipt of an order of the tribunal, the debt recovery officer has to recover the debt amount from the borrower within the time limit specified in that order and get it provided to the concerned bank and financial institution.

(2) In recovering the principal and interest of a debt, the debt recovery officer may follow the following procedures, subject to the prevailing law.

- (a) To take possession of, or auction, the borrower's other movable or immovable property whether furnished as security or not,
- (b) To take possession of, or auction, the guarantor's movable or immovable property,
- (c) Where any individual is a borrower or guarantor, to arrest such individual and detain him/her pursuant to the prevailing law.

26. Liability of guarantor: (1) The liability of a guarantor furnishing guarantee

for a borrower shall be limited only to the amount of guarantee furnished.

(2) Notwithstanding anything contained in the prevailing law, the liability referred to in Sub-section (1) may be realized directly from the guarantor.

27. Order of debt recovery office to be equal to that of tribunal: (1) Any order given by the debt recovery officer under this Act in respect of recovery of a debt shall be equal to an order given by the tribunal, and it shall be the duty of all the concerned to carry out such order.

(2) If any person disobeys any order given by the debt recovery officer under this Act, the tribunal may institute contempt proceedings against that person pursuant to Section 30.

Chapter-5

Miscellaneous

28. Designation of debt recovery officer: (1) Government of Nepal may designate at least the Gazetted Class-Two officer as the debt recovery officer.

(2) The functions, duties and powers of the debt recovery officer shall be as prescribed.

29. Provisions relating to other employees: Government of Nepal may provide required employees for the operation of functions of the tribunal or appellate tribunal, in addition to the debt recovery officer.

30. Power to institute action on contempt: (1) The tribunal or appellate tribunal may institute action on its contempt.

(2) If the tribunal holds that its contempt has been committed, it may punish the accused with a fine not exceeding one thousand rupees or with imprisonment for a term not exceeding one months or with both.

(3) If the Appellate Tribunal holds that its contempt has been committed, it may punish the accused with a fine not exceeding five thousand rupees or with imprisonment for a term not exceeding three months or with both.

(4) Notwithstanding anything contained in Sub-section (1) or (3), if the accused begs a pardon to the satisfaction of the concerned tribunal or appellate tribunal, it may pardon him/her without subjecting him/her to any punishment or lessen or pardon punishment where punishment has already been specified or issue an order to suspend punishment and not to execute punishment if the specified terms are observed.

31. Payment of amount by bank and financial institution: (1) After a debt has been recovered under this Act, the concerned bank and financial institution have to pay one percent of the debt amount to the tribunal for the debt recovery fee. In so paying the debt recovery fee by the bank and financial institution, it has to pay only the amount that remains after deducting the amount paid by it under Sub-section (2) of Section 15.

(2) The tribunal has to deposit the amount paid pursuant to Sub-section (1) with the consolidated fund as prescribed by Government of Nepal.

32. Transfer of cases: The debt related cases falling under jurisdiction of this Act and awaiting judgment by the District Court and the Appellate Court shall be transferred to the concerned tribunal or appellate tribunal.

33. Power to frame Rules: Government of Nepal may frame necessary Rules in order to implement the objectives of this Act.