

Banking Offence and Punishment Act, 2064

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An Act enacted to Provide Legal Provisions in relation to the Banking Offences and Punishments

Preamble: Whereas it is expedient to provide legal provisions on banking offences and punishments with a view to promoting trust towards banking and financial system thereby mitigating the consequences and the risks that the banking and financial system may suffer on account of the offences may be occurred in course of transactions of Banks and Financial Institutions be it enacted by the Legislative Parliament .

Chapter-1 Preliminary

1. **Short Title, Scope and Commencement:** (1) This Act may be called "Banking Offence and Punishment Act, 2064 (2008).

(2) This Act shall come into force within Nepal and also to the persons and institutions whomsoever, residing abroad after committing banking offence in Nepal.

(3) This Act shall come into force immediately.

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

(a) "Bank" means a bank licensed by Nepal Rastra Bank to carry out "A" category financial transactions, pursuant to prevailing law.

(b) "Banking Offence" means the offenses as stipulated under Chapter-2.

(c) "Financial Institution" means a financial institution licensed by Nepal Rastra Bank to carry out "B", "C" and "D" category financial

transactions, pursuant to prevailing law.

- (d) "Institution" means a firm or company eligible to maintain a bank account with the bank or financial institution, pursuant to the prevailing laws and the term also includes other corporate body or agencies established under the prevailing laws.
- (e) "Borrower" means a person, firm, company or corporate body incorporated under prevailing law, which borrowed from Bank or Financial Institution and this term also includes the person who has provided guarantee.

Chapter-2

Banking Offences

- 3. **Not to open an account or demand cash payment in an unauthorized manner:** While opening an account with a bank or financial institution or demanding cash payment, no one shall undertake the following acts:
 - (a) Open or knowingly allow to open an account by submitting false documents,
 - (b) Open or allow to open an account in the name of a fictitious or other person or organization, except otherwise permitted by the laws,
 - (c) Draw a cheque to obtain or to knowingly make payment from an account where he/she has an apparent knowledge that the account does not have sufficient balance to cover the amount of the cheque drawn.

- 4. **Not to obtain or issue cheques, cheque-books or bank statements in an unauthorized manner:** (1) No one shall demand or obtain a cheque, cheque-book or account statement of other person in an unauthorized manner or by

misleading in any manner or by giving an impression that he/she is the true holder of the same.

(2) No one shall, in an unauthorized manner, provide a cheque, cheque-book or account statement to other person or institution without the request of the concerned person in writing.

5. **Not to make unauthorized withdrawals or payments:** While withdrawing or making payment from an account maintained with a bank or financial institution, no one shall;

(a) withdraw money, in an unauthorized manner, from other person's account,

(b) withdraw money by stealing a cheque held by other person or by obtaining the same in any other manner,

(c) transfer fund, in an unauthorized manner, from customer's account or make unauthorized payment therefrom,

(d) obtain or make cash payment by getting any sort of fake or other person's bills of exchange, cheque, draft or other similar instruments in an unauthorized manner.

6. **Not to obtain or make payment by way of abuse or unauthorized use of electronic means.:** No one shall, obtain or make payment by way of abuse or unauthorized use of a credit card, debit card, automated teller machine(ATM) card or other electronic means.

7. **Not to avail or provide loans in an unauthorized manner:** While availing or providing loans from a bank or financial institution, no one shall commit the following acts:

- (a) Avail or provide loans by submitting a false, fake or fake financial statement or by creating artificial business.
- (b) Avail or provide over loans by way of unnatural over valuation of collateral security.
- (c) Avail or provide loans by way of unnaturally hiking the project cost based on false details.
- (d) Avail or provide credit, facility or discounts beyond the authority obtained or limit sanctioned.
- (e) Re-avail or re-provide loans from or by other Bank of Financial Institution without having due release of the collateral security once provided to a Bank or Financial Institution or in excess than the amount covered by the collateral security against the same collateral security.

Provided that, this restriction shall not be applicable in case of release of loans to be provided under consortium.

- (f) Avail loans through an entity having established in the name of a person who, in fact, does not have financial capability to run the business or, who is a person under undue influence or extend loans knowing the said facts.
- (g) Extend credit more than the requirement compared to the customer's business transaction.
- (h) Accept or provide any sort of undue benefit in return to granting credit facility.

8. **Not to misuse credit:** No one shall misuse the credit facilities availed from a bank or financial institution or cause to misuse by diverting in the purpose other than for which the credit facilities were availed.
9. Not to misuse banking resources, means and assets: (1) The Promoter, Director, shareholder who is deemed to have a financial interest under the prevailing laws, Chief Executive Officer, employee, advisor, Managing Agent or associated person or organization or family member or close relatives of such persons shall not misuse the resources of a bank or financial institution by availing a credit or facility or in any other manner.

Provided that,

- (1) It shall not be deemed an obstruction in availing loans or advances by the Chief Executive Officer or employees of a bank or financial institution under employees' facility scheme, as per the prevailing laws.
- (2) It shall not be deemed to be an obstruction in providing credit or facility to close relative having approval of the Board of Directors of Bank or Financial Institution.

Explanation:

- (a) For the purpose of this Sub-section, the term "family member" means concerned person's husband or wife, son, daughter, adopted son, adopted daughter, father, mother, step mother and taken cared elder brother, younger brother and elder sister younger sister.
- (b) "Close relative" means separated elder brother, younger brother, elder sister in law (wife of elder brother), younger sister in law (wife of younger brother), married elder sister, younger sister, elder brother in law (husband of elder sister), younger brother in law (husband of younger sister), nephew (son of uncle), niece (daughter of uncle), younger brother in law (wife's younger brother), younger sister in

law (wife's younger sister), mother in law (wife's mother), father in law (wife's father), uncle, aunt, maternal uncle, maternal aunt, nephew (son of sister), Niece (daughter of sister), grandson, granddaughter, granddaughter in law (wife of grandson), grandson in law (husband of granddaughter).

(2) No one shall, in violation of the interest of the depositors or a bank or financial institution, incur or cause to incur the assets of the bank or financial institution .

(3) No one shall commit any financial irregularity, while auctioning the non-banking assets or other assets of a bank or financial institution or while doing any other transactions.

10. **Not to acquire assets or open account by borrower who has over dues:**

No borrower who has over dues shall remit money to a bank by opening an account with a local or foreign bank or financial institution or continue such account or operate the account or purchase any movable or immovable assets in any manner or acquire title or possession over such assets in any manner without settling the dues payable to a bank or financial institution. In case any borrower, before over due, has obtained any moveable or immovable asset or continued account operation, the borrower must use the amount to be received from such asset or bank account in repaying the over dues.

11. **Not to stop credit facility in the way to loss working project of**

borrower: Bank or Financial Institution which has once provided the first installment after approving credit facility for a project of borrower, without sufficient basis and considerable reason, shall not stop the remaining installments in-between in the way to loss working project of the borrower.

12. **Not to make loss by making alteration in the account or ledger or by committing forgery or fraud:** No one shall, with a motive of self benefit or to cause loss or benefit to any other person, commit any forgery by tempering any matter written in Bank or Financial Institution's document or account or ledger whether by removing or by rewriting the same to mean different sense or with a motive to cause loss other, commit fraud by misleading others representing the untrue or non-existent facts to be true or existent or by getting a document signed with an alteration in the date, number or particular.
13. **Not to derive excess, low or false valuation:** While carrying out the valuation of movable or immovable assets held by a bank or financial institution as a collateral security of a loan or non-banking movable or immovable asset of a bank or financial institution, the valuer shall not cause any loss or harm to the bank or financial institution by deriving excess, low or false valuation of such assets while valuating for the purpose of auctioning sell or for other purpose relating to Bank.
14. **Not to carry out and cause to carry out irregular economic or financial transactions:** No one shall, with a motive to cause any harm or loss to a bank or financial institution, get something done or undone or bargain or forbid bargaining or take or give any amount or take or give any goods or services free of costs; take or give any charity, grant, gift or donation; execute or get executed or translate or get translated a false deed or do work or get the work be done with *mala fide* intention to cause illegal benefits or losses.

Chapter-3

Punishment

15. **Punishment:** (1) If a person commits any offense specified under Clause (a), (b) or (c) of Section 3, Section 4 or Section 11, such person shall be punished with a fine up to Rupees Ten thousand, depending upon the degree of the

offense committed.

(2) If anyone commits any offense specified under Section 5, 6 or Clause (d), (e), (f), (g) or (h) of Section 7 or Section 8,9,10,12 or Section 14, he/she shall be punished with fine and imprisonment as stipulated under on the basis of the claimed amount, after recovering the claimed amount, if any and depending upon the degree of the offense committed.

- (a) If the claimed amount is up to one million rupees Imprisonment up to one year
- (b) If the claimed suit amount is above one million rupees and up to five million rupees Imprisonment from one year to two years
- (c) If the claimed amount is above Five million rupees and up to Ten million rupees Imprisonment from two years to three years
- (d) If the claimed amount is above Ten million rupees with whatever amount Imprisonment from three years to five years

(3) If anyone commits any offense specified under Clause (a), (b), (c) of Section 7 or Section 13, he/she shall be punished with a fine equivalent to the value of such collateral security and an imprisonment up to a period of five years, depending upon the degree of the offense committed and the Adjudicating Officer may, depending upon the degree of the offense, issue an order restricting such valuer not to carry out the valuation works up to a period of three years from the date of completion of the punishment.

(4) In case the suit amount cannot be established in accordance with this Section, he/she shall be punished with a fine up to Rupees one million and an imprisonment up to two years.

(5) In case any organization commits any offense specified under this Act and if the concerned office bearer or the employee committing such offense be identified, he/she shall be held liable, if the office bearer or the employee could not be identified, the person working in the capacity of the organization head at the time of the occurrence of the offense shall be held liable.

(6) The person or organization attempting to commit a banking offense or the person or organization indirectly involved in committing such offense or the person assisting in committing such offense or the employees or the Chief Executive Officer or Office bearer of such assisting organization shall be punished with a half of the punishment that the offender may be subjected to.

16. **Punishment to the Persons Creating Hindrance:** If any one creates hindrance/obstacle in the investigation and inquiry proceedings undertaken under this Act, the adjudicating officer may punish him/her with an imprisonment up to six months or a fine up to five thousand rupees or both based on the report of the Officer involving in Investigation and inquiry.

Chapter-3

Proceeding and Disposal of the cases

17. **Time and limitation for the lodgment of First Information Report:** (1) In regard to an offense under this Act, an First Information Report may be lodged within one year from the date the offense comes to the knowledge and the case shall have to be lodged within six months from the date the First Information Report FIR is so lodged with the Court as fixed by the Government of Nepal with publishing a notice in Nepal Gazette.

(2) Notwithstanding anything contained hereinabove in Subsection (1), a case may, at any time, be initiated against an employee or office-bearer of a bank or financial institution, who caused misappropriation or loss of asset of Bank or Financial Institution during his/her assumption of service in any post thereof and there shall be no obstruction in initiating a case even after such office-bearer or employee retires from the service.

18. **Government to be the plaintiff:** In the case where punishment shall be given as per this Act, the government shall be the plaintiff and such case shall be considered to be included in Schedule-1 of Act relating to Government Cases, 2049(1993).

19. **Proceedings may be initiated by detaining into the custody:** (1) Notwithstanding anything contained in the prevailing laws, the Officer involving in Investigation and inquiry may detain an offender under the Act, in the custody by giving him/her a detention order as per the prevailing laws, if there is an adequate ground to believe that the person, against whom proceedings have been initiated as per this Act, may extinct or destroy any evidence or create hindrances or obstacles or influence adversely in the proceeding of investigation and inquiry of it or on the basis of the evidences, existent presently, if there is a reasonable ground to believe that a person, not having residence in Nepal, is the offender of banking offence who can be subject to an imprisonment up to 6 months or above.

(2) In case the investigation and inquiry initiated in regard to the person detained in the custody as stipulated under Subsection (1) above could not be completed within 24 hours and it is deemed necessary to continue the investigation and inquiry process by detaining him/her further in the custody, the investigation and inquiry officer shall detain further only after obtaining approval from the adjudicating officer getting the person in presence before the

adjudicating officer.

(3) While requesting to adjudicating officer for approval as stipulated under Sub-section (2) the charges against the person detained in the custody, basis thereon, justification for continuing the investigation and inquiry proceedings by detaining him/her in the custody and description of the affidavit of statement obtained, if any taken from him/her, shall have to be clearly mentioned.

(4) If approval for detention as stipulated under Sub-section (2) above is sought for detention, the adjudicating officer may, considering, after reviewing the concerned documents, whether the investigation and inquiry progress has been satisfactorily or not, grant approval for detention up to a period of maximum forty-five days at a time or in multiple instances but not exceeding ten days at a time, if progress in the investigation and inquiry proceedings deemed to be satisfactory.

Chapter-5

Miscellaneous

20. **Cooperation to be extended**: It shall be the duty of the bank or financial institution or the concerned individual to extend necessary cooperation to the investigation and inquiry officer while carrying out investigation and inquiries on the offenses under this Act.

21. **Action not be initiated on the ground of breach of secrecy**: Notwithstanding anything contained in the prevailing laws, if the person, who provided information on happening of offence or possible happening of the same to initiate legal proceedings or to stop occurrence of offence under this Act, is an employee of a bank or financial institution, no action shall be taken on the ground of breach of secrecy in terms of his/her service rules, for the reason

of his/her providing/doing such cooperation.

22. **Provisions relating to serving the Notice:** (1) Notwithstanding anything contained in the prevailing laws, a notice to be served in the name of a foreign individual, in connection with the offenses under this Act, shall be served in the name of an office or representative of such individual in Nepal, if any, and the notice so served shall be deemed to be duly served.

(2) In case the office or representative as stipulated under Subsection (1) is not existent, the notice shall be served at the main business place of such individual or his/her permanent residential address or at the mailing address if provided by him/her during the course of business, through telex, telefax or other means of recordable telecommunication or through post by registration and the notice so served shall be deemed to be duly served.

(3) Notwithstanding anything contained in Sub-section (1) or (2), if there is a separate provision in any treaty where Government of Nepal or Nepal is a party, there shall be no obstruction in serving the notice in the name of a person residing in foreign country in the manner as specified in the same.

23. **Notice to be published:** In case a report is received, in connection with the dispatch or service of a notice to any individual under this Act or other prevailing laws, detailing that the notice could not be dispatched or served for the reason that the address of such individual could not be identified or for any other reasons, notwithstanding anything contained in the prevailing laws, a public notice to this effect shall be published in a national level newspaper (in an English daily in regard to a foreigner) at least two times extending him/her a time period of 30 days and furnishing thereon the abridged particulars of the case, whether the case is investigated or is already lodged with the adjudicating officer. If the notice is so published, it shall be deemed to be duly served or

served to such individual, notwithstanding anything contained in this Act or other prevailing laws.

24. **Issuance of order for creating encumbrances over the assets of a foreign individual:** (1) If any foreign individual does not appear in front of the investigation and inquiry officer as per the notice even after providing notice by the investigation and inquiry officer or serving it pursuant to Section 22, the investigation and inquiry officer may issue an order not to take outside Nepal or to create encumbrance over the property, entitlement, interest or concern held by him/her within Nepal, if any, till the person doesn't appear in front of the investigation or inquiry officer and it shall be the duty of the all concerned to comply with such order.

(2) Person not complying with the order issued pursuant to Sub-section (1) shall be punished with a fine up to Rupees one hundred thousand by the investigation and inquiry officer. The losses or harm caused to the Government of Nepal or public institution, if any, due to such noncompliance of the order, shall also be recovered from him/her.

25. **Adjudication proceedings and disposal of the case not be affected:**

Notwithstanding anything contained in the prevailing laws, the adjudication proceedings and disposal of the case initiated or to be initiated pursuant to this Act shall no longer be affected even if the offender is died.

26. **Waiver in the Claim of Punishment may be Happen:** The investigation and inquiry officer may provide waiver in the claim of punishment, in full or part, to a person extending cooperation in regard to the investigation and inquiry proceedings initiated under the Act presenting such person as a witness.

Provided, notwithstanding anything contained in this Act or in prevailing laws a

case may be reregistered against such person if his/her cooperation could not be established from other proof/evidence or if he/she makes statement before the adjudicating officer against the cooperation extended by him/her to the investigation and inquiry officer

27. **To be considered ineligible**: A person convicted with an imprisonment under this Act shall be considered ineligible to work as an employee of a bank or financial institution.
28. **To be governed as per the prevailing laws**: Notwithstanding anything contained elsewhere in this Act, in the offense committed in the involvement of a person holding public position under the prevailing laws or of a civil servant, if the offence is prosecutable or punishable pursuant to Commission for the Investigation of Abuse of Authority Act, 2048 (1992) and the Corruption Prevention Act, 2059 (2003) , the action shall be initiated and the punishment shall be given in accordance with the same Acts.
29. **Regulation may be framed**: The Government of Nepal may formulate necessary Rules for implementation of the objectives of this Act.