

# PRIVATIZATION ACT, 2050 (1994)

**DATE OF ROYAL SEAL OF ASSENT :**

19 paush 2050 (Jan.03,1994)

Preamble: Whereas, in order to increase the productivity through enhancement of efficiency of the state owned enterprises of Nepal, and thereby, mitigate the financial administrative burden to the Government, and to usher in all round economic development of the country by expanding the participation of private sector in the operation of such enterprises, it is expedient in the national interest to privatize such enterprises and to make arrangements therefor.

Now, therefore, be it enacted by the Parliament in the twenty second year of the reign of **His Majesty King Birendra Bir Bikram Shah Dev.**

1. **Short Title and Commencement:** (1) This Act may be called “Privatization Act, 2050 (1994) ”.  

(2) This Act shall come into force immediately.
2. **Definitions:** Unless the subject or context otherwise requires, in this Act –
  - (a) **“Enterprise”** means a company, corporate body, industry or any other institution wholly or partly owned by Government of Nepal and this expression shall also include other company, corporate body, industry or any other institution under the control or ownership of such company, corporate body, industry or any other institution.
  - (b) **“Privatization”** means involving private sector in the management, or to sell or lease it , or to transfer government ownership into public ownership, or an act to infuse participation by any means, either wholly or partly, of private sector or of the employees or workers, or of all interested groups.

- (c) **“Government Sector”** means the sector wherein Government of Nepal has directs, or indirectly whole or partial ownership in or has control over the management of any Enterprise.
- (d) **“Private Sector”** means the sector other than the Government Sector.
- (e) **“Committee”** means the Privatization Committee constituted pursuant to Section 3.
- (F) **“Prescribed” or “as prescribed”** means prescribed by or as prescribed in the Rules made under this Act.

3. **Formation of Privatization Committee** : (1) A Privatization Committee shall be formed to manage the privatization of enterprises.

(2) The Committee to be formed pursuant to Sub-Section (1) shall consist of the following members.

(a) Minister or State Minister for Finance...Chairman

(b) Chairman, Finance Committee

(House of Representatives)..... Member

(c) Two Members of Parliament nominated

by the Government of Nepal..... Member

(d) Member, National Planning Commission... Member

(e) Secretary, Ministry of Finance..... Member

(f) Secretary, Ministry of Law, Justice and

Parliamentary Affairs..... Member

(g) Secretary, Ministry of Labour..... Member

- (h) Secretary (Ministry Concerned with the enterprise being privatized)..... Member
- (i) President, Federation of Nepalese Chamber of Commerce and Industry..... Member
- (j) Joint-Secretary, Ministry of Finance (Corporation Co-ordination Division).....Member-Secretary

(3) The Committee shall, if necessary, invite the Chief of the enterprise, labour representatives and any distinguished economist in the meetings of the Committee.

4. **Powers, Functions and Duties of the Committee;** The Powers, functions and duties of the Committee shall be as follows;

- (a) To recommend, Programmes and priorities of privatization, to the Government of Nepal in view of suggestions contained in the Finance Committee (House of representatives) Report.
- (b) To conduct study or research in order to formulate privatization programs .
- (c) To require evaluation of the enterprise and to recommend Government of Nepal on the process of privatization;
- (d) To co-ordinate and remove hindrances faced in the cause of privatization process .
- (e) To follow-up the decisions and agreements relating to privatization and cause to do so;
- (f) To constitute sub-committees, as may be necessary, in respect of privatization; and

(g) To perform or require to be performed other works, if necessary, in respect of privatization.

5. **Committee Meeting and Decision** : (1) The meeting of the Committee shall be held on the date, time and place designated by the Chairperson.

(2) The Chairperson of the Committee shall preside over the meeting of the Committee, and in his/her absence, the meeting shall be presided over by a member selected by the members present from among themselves.

(3) In the Committee, the decision of the majority shall prevail; in case of a tie, the presiding person shall have a casting vote.

(4) Attendance of members present in the meeting, agenda, and the decision made thereon shall be recorded in a Minute Book.

(5) The decisions of the Committee shall be certified by the member-secretary.

(6) The Committee may, if necessary, invite any national or foreign expert or consultant to attend the meeting as an observer.

(7) Procedures, relating to the meetings, shall be as determined by the Committee.

6. **Publication of Notice for Privatization** ; (1) If Government of Nepal deems necessary to privatize an enterprise classified for privatization, it shall publish notice to this effect in the Nepal Gazette.

(2) After publication of the notice pursuant to Sub-Section, (1) Government of Nepal shall determine the process of privatization according to the provisions of this Act.

7. **Evaluation Process of Enterprises** : (1) For privatization of an enterprise the Privatization Committee shall appoint a team of national experts or, if

necessary, a joint team of national and foreign experts for evaluation of the enterprise.

(2) The team of experts, in the course of evaluation of the enterprise pursuant to Sub-section (1), shall make an assessment on the basis of the assets of the enterprise, market price of shares, profit and loss of the enterprise, and its potential for future production, sales, profit and loss.

8. **Determination of Privatization Process** : Government of Nepal may privatize any enterprise which has been classified for privatization in pursuance of any or all of the following processes –

(a) By sale of shares of the enterprise to the general public, employees, workers, and any person or company, interested in the management of such enterprise.

Provided, participation general public, workers and employees shall be maximized to the extent possible taking into account of the nature and financial condition of the enterprise in the course of sells of such shares.

(b) By formation of cooperatives ;

(c) by selling assets of the enterprise;

(d) By leasing out the assets of the enterprise;

(e) By involving private sector in the management of the enterprise; and

(f) By adopting any other modality considered appropriate by Government of Nepal on the basis of the recommendation of the Committee.

9. **Proposals for Privatization** : While privatizing any enterprise, Government of Nepal shall invite proposals relating to such privatization by publishing a notice in a national newspaper giving necessary details of such enterprise in conformity with international practice.
10. **Evaluation of the Proposals** : (1) The Committee shall evaluate proposals, received from the private sector pursuant to the notice published under Section 9, on the following basis –
- (a) Attractive price;
  - (b) Management of the enterprise without changing its nature;
  - (c) Retention of the services of present workers and employees;
  - (d) Enhancement in the employment opportunity;
  - (e) Managerial experience; and
  - (f) Expansion of the enterprise and business by preparing a good business plan and making additional investments.

(2) While evaluating proposals pursuant to Sub-Section (1), if the proposals of two or more investors are found to be identical, priority shall be given to the Nepal investor or the group of Nepali investors.

11. **Agreement to be Concluded for Privatization** : (1) Prior to handing over an enterprise, an agreement shall be entered into between the offerer and offeree specifying clearly the terms and conditions to be observed by both.

Provided, that no such agreement shall be required to be entered into where the shares are being sold in open market to the general public, employees,

and workers of the enterprise and private sector through capital markets or any others means.

(2) The terms of payment to Government of Nepal on account of the privatization shall be clearly spelled out in the agreement to be concluded pursuant to Sub-Section (1).

(3) The time schedule for handing over of the enterprise by Government of Nepal to the buyer and other terms and conditions that Government of Nepal may wish to prescribe, in respect thereof, shall be clearly spelled out in the agreement to be concluded pursuant to Sub-Section (1).

(4) A brief note about the terms and conditions of the privatized enterprise shall be published within one month from the day of signing of the agreement, pursuant to Sub-Section (1) for information of the public.

12. **Formation of Sub-Committee** : (1) The Committee may, if necessary, form Sub-Committee of experts for the purpose of privatization.

(2) The duties and functions of Sub-committee constituted pursuant to Sub-Section (1) shall be as determined by the Committee.

13. **Settlement of Disputes** : (1) If any dispute arises, in respect of any matter contained in the privatization agreement entered into between Government of Nepal and the party participating in the privatization, such dispute shall be resolved through mutual consultation among concerned parties.

(2) If the dispute is not resolved pursuant to Sub-Section (1), such dispute, with the consent of both parties, may be referred to arbitration. The arbitration for resolving the dispute shall be conducted in accordance with existing laws relating to arbitration or the Rules of Arbitration of the United Nations commission on International Trade Law (UNCITRAL).

(3) The venue of arbitration shall be Kathmandu and prevailing laws of the Kingdom of Nepal shall be applied in the process of arbitration.

**14. Provisions Relating to Employees :** (1) Government of Nepal may, at the time of transferring the services of, and gratuity and other benefits accrued to the workers to the enterprise of the new investor ensure the continuity of service of the present workers in the enterprise to be privatized.

(2) If, the continuity of service as mentioned in Sub-Section (1) could not be maintained, and thereby, the present employees and workers of the enterprise have to be retrenched, Government of Nepal may, on recommendation of the Committee, retire such employees and workers subject to the provisions of Sub-Section (3).

(3) Where retrenchment is granted pursuant to Sub-Section (2), Government of Nepal shall on the recommendation of the Committee, arrange for reasonable compensation or benefits in respect of the present employees and workers being retired from the privatized enterprise.

(4) Government of Nepal shall make available to the present employees and worker of the privatized enterprise, shares of such enterprise free of cost or at discount price.

**15. Facilities and Charges :** (1) The privatized enterprises shall be entitled to the continuation of facilities given to its predecessors.

(2) While, transferring all movable and immovable assets including land of the privatized enterprise, both parties shall pay charges as per the prevailing law.

**16. Liquidation of Enterprises :** (1) If Government of Nepal in the process of privatization of any enterprise wholly owned by it finds it reasonable to liquidate such enterprise it shall, notwithstanding anything contained in the



prevalent laws, dissolve such enterprise by publishing a notification to that effect in the Nepal Gazette or shall take separate measure for such liquidation.

(2) All arrears due to the enterprise liquidated pursuant to Sub-Section (1) shall be recovered, in the manner, similar to the recovery of government dues.

(3) Government of Nepal , may transfer the assets and liabilities of the enterprise liquidated pursuant to Sub-Section (1) to any other body or may, on the recommendation of the Committee, grant remission in respect of the unusable property and unrecoverable liabilities.

(4) If all liabilities of the enterprise could not be fully settled from the assets of the enterprise, the residual liabilities shall be settled according to the existing laws.

**17. Power of Government of Nepal to Issue Order or Directive :**

Government of Nepal may issue necessary order or directive to the concerned enterprise or person in connection with the privatization and it shall be the duty of the concerned enterprise or person to abide by such order or directive.

**18. Punishment :** Any person who hinders or obstructs, in any manner, the observance of this Act or the implementation of agreement concluded hereunder or the process of privatization, His Majesty's Government, may punish such person with an imprisonment upto two months or with a fine upto five thousand rupees or both.

**19. Delegation of Powers :** The Committee may delegate some of the powers conferred on it by this Act to the chairperson, member or member-secretary, sub-committee, or any member of the sub-committee.

20. **Power to Frame Rules:** Government of Nepal may frame necessary rules in order to implement the objectives of this Act.
21. **Power to Remove Difficulties :** If any hindrance or obstruction arise in course of implementation of this Act, Government of Nepal, may remove such hindrance or obstruction, through an order contained in the notification in Nepal Gazette.
22. **Prevalence of the Act :** Notwithstanding anything contained in any existing laws, the provisions of this Act shall prevail on the matters provided herein and in other matters, the existing law shall apply.