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INCORPORATION OF A FOREIGN COMPANY

BRIEF ON REGISTRATION, CANCELLATION AND
WINDING UP OF FOREIGN COMPANIES IN NEPAL



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INCORPORATION OF A FOREIGN COMPANY

1. INTRODUCTION:

- 1.1. The Company Act of Nepal, specifically the **Company Act 2063 (2006)** (hereinafter, the "**Act**"), outlines the regulations and procedures for the registration and operation of foreign companies (vide Branch Office and Liaison Office) in Nepal.
- 1.2. **Section 154** of the Company Act 2063 (2006) sets out the regulatory framework for the registration and operation of foreign companies in Nepal. The provision outlines the requirements and procedures for registering branch offices and liaison offices, ensuring compliance with local laws and regulations. It also defines the scope of activities that registered foreign companies are allowed to undertake and emphasizes transparency through a proper display of information. The Act aims to strike a balance between encouraging foreign investment and ensuring regulatory control over foreign company activities within Nepal.

2. REGISTRATION OF FOREIGN COMPANY

- 2.1. According to **Section 154(1)** of the Act, foreign companies are prohibited from conducting any business or transaction within Nepal without either registering a branch office or establishing a liaison office. This Section emphasizes that engaging in activities such as investing in shares, lending money, or participating in company operations with approval from relevant authorities does not constitute conducting business or transactions for the purpose of this provision.
- 2.2. The explanation further clarifies that if a foreign company carries out transactions through an office or appoints a person for regular contact or avails services in Nepal for a period of one month or more, it will be considered as conducting a transaction or establishment of an office, subject to the provisions of this Section.
- 2.3. Application for Registration:
 - 2.3.1. **Sub-Section (2) and (3) of Section 154** outline the application process for the registration of a foreign company.
 - 2.3.2. If a foreign company wishes to register its branch office, it must apply to the Office of the Company Registrar (the "OCR") along with the required permissions, fees,

and relevant documents as prescribed.

2.3.3. Similarly, if a foreign company seeks to establish a liaison office, it must apply for the same, accompanied by the necessary permissions and fees.

2.4. **Permission and Registration Process:** The applicant must submit the following documents while applying for registration of a foreign company:

2.4.1. Permission obtained from the competent authority to conduct business in Nepal. The provision further explains that if a competent body selects a foreign company for business or the company enters into a contract with a competent body for any business in Nepal, it will be considered permission granted by the concerned body for the purposes of registration. However, the Act does not qualify if a competent body includes private entities or only government/public bodies. This is a cause of concern in practice while registering a foreign company pursuant to a contract signed with a private company in Nepal.

2.4.2. Copies of the charter, certificate of incorporation, Memorandum of Association, and Articles of Association of the company, along with their Nepalese translations.

2.4.3. Details of the registered office, principal place of business, date of incorporation,

- paid-up capital, and major objectives of the company.
- 2.4.4. Information about directors, managers, company secretaries, or main officers of the company and their citizenship.
 - 2.4.5. Details of the person authorized to receive summons or notices on behalf of the company in Nepal.
 - 2.4.6. Address of the principal place of business and any proposed investments and transactions in Nepal.
 - 2.4.7. Proposed date of commencement of transactions in Nepal.
 - 2.4.8. A Power of Attorney executed in accordance with the legal requirements of its home country. The appointed representative serves as the point of contact for receiving summons, notices, and other lawful communications on behalf of the company. The Power of Attorney must state that any communication delivered to the authorized representative is binding on the company.
 - 2.4.9. Declaration confirming the accuracy of the submitted information.
- 2.5. Upon receipt of an application for registration, the OCR is required to conduct necessary inquiries, register the company, and issue a registration certificate within thirty days from the

application date, as per **Section 154(4)**.

- 2.6. If the registration cannot be completed, the reasons for the same must be communicated to the applicant within thirty days, as per **Section 154(5)**.

3. SCOPE OF REGISTERED ACTIVITIES:

- 3.1. A foreign company registered under this Section is allowed to carry on the same type of business or transaction as it does in its home country or the country of incorporation, as per **Section 154(8)**.
- 3.2. Foreign companies registered under this Section are not permitted to issue shares or debentures within Nepal, as per **Section 154(11)**.

4. COMPLIANCE:

- 4.1. Registered foreign companies must display their name board at their place of business, mentioning the country of establishment and the Nepalese registration number. The same information should be included in bills, receipts, invoices, letterheads, etc. pursuant to **Section 154(9)**.

- 4.2. Financial reporting obligations for a foreign company include:
 - 4.2.1. Preparation of an annual financial statement, balance sheet, and profit and loss account reflecting the company's transactions in Nepal.
 - 4.2.2. Submission of the financial statement, audit report, and board of directors' report within six months of the financial year's end, along with any documents required under the law of the company's home country.
 - 4.2.3. Specific details to be included in the annual financial statement, such as particulars of properties, cash held with Nepalese banks, loans and liabilities, and payments to employees or consultants.
 - 4.2.4. Requirement for documents in languages other than Nepali or English to be accompanied by authentic translations.

5. CANCELLATION OF REGISTRATION AND WINDING UP:

- 5.1. **Section 158** of the Act covers the cancellation of registration and winding up of a foreign company whereby:
 - 5.1.1. Foreign companies can apply for the cancellation of registration if they wish to cease

their operations in Nepal or if authorities prohibit their business activities.

- 5.1.2. An application for cancellation must be accompanied by fees and evidence that the company has no outstanding liabilities in Nepal.
- 5.1.3. In case of liquidation proceedings initiated against a foreign company abroad, the authorized representative must inform the OCR and the general public through a newspaper notice.
- 5.1.4. If a foreign company ceases operations due to liquidation proceedings, it must comply with the prevailing law on insolvency for transactions within Nepal.

6. TRANSITIONAL PROVISION:

- 6.1. Foreign companies carrying out business or transactions or establishing a liaison office in Nepal at the commencement of the Act must be registered within six months from the date of commencement as per **Section 154(12)**.

KEY CONTACTS

If you have any questions or would like to know how this might affect your business, get in touch with these key contacts



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