

COMPANY DIRECTIVE: SECOND AMENDMENT, 2072

DESCRIPTIVE ANALYSIS OF THE SECOND AMENDMENT TO
THE COMPANY DIRECTIVE



***DISCLAIMER:** This publication is not intended to be used as a basis for undertaking any significant transactions, financial or otherwise without consulting appropriate professional advisers.*

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Company Directive, 2072 (2015) (the "Directive") was formulated as per **Section 16** of the **Company Act, 2063 (2006)** (the "Company Act" or "Act"), by the Office of the Company Registrar (the "OCR" or "Office") in order to implement the Company Act efficiently and conduct company administration-related work effectively and systematically. The Directive was first amended on 3 Mangsir 2073 (18 November 2016) and the second amendment was done on 6 Bhadra 2079 (22 August 2022). The second amendment in the directive has brought reforms to the procedural aspects of company compliances and incorporations along with various other improvements to the prevailing law. These reforms and a few ambiguous provisions that the Directive has brought have been discussed in this brief.

AMENDED PROVISIONS

S.N.	PROVISIONS	EXISTING PROVISION	REVISED PROVISION
1	Section 4.4	Requirement of Legal Practitioner for Company Incorporation Except for the submission of a certified copy by the concerned	Requirement of Legal Practitioner for Company Incorporation A licensed legal practitioner (pleader, advocate or senior advocate) or a licensed notary public shall certify the

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		stakeholder, if the major legal deeds related to company registration and administration are to be submitted by any other person, a licensed legal practitioner (pleader, advocate or senior advocate) or licensed notary public must certify the same.	major legal deeds including Memorandum of Association (" MOA "), Articles of Association (" AOA "), amended MOA and AOA, unanimous agreement, sale and purchase of share, gift donation, share confiscation and deregistration of company related to company registration and administration presented to the Office. However, in case of share sale-purchase deed, notary public must have certified the original sale deed.
3	Section 66.1	Simplification of Liquidation Process Voluntary Liquidation: Founders can apply for liquidation to the Office to have revoked the registration by showing the reason for not being able to start the business of the company.	Simplification of Liquidation Process Liquidation of the company: As per Section 136 of the Act, all the founder/s who commit to purchase 67% of the total number of shares of the company, can apply for liquidation to the Office by presenting themselves

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			or through an authorized representative to have revoked the registration by showing the reason for not being able to start the business of the company.
4	Section 66.2	Simplification of Liquidation Process For a company having more than one founder, founders who have subscribed to at least 75% of the total number of shares shall agree to present the application for liquidation.	Simplification of Liquidation Process For a company having more than one founder, founders who have subscribed to at least 67% of the total number of shares shall agree to present the application for liquidation.
5	Section 10.b	Exemption on Quorum under Exceptional Circumstances No provision	Exemption on Quorum under Exceptional Circumstances Exceptional provision related to quorum: (1) As per Section 73 of the Act, the quorum of the general meeting of

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			<p>a private company shall be determined as per AOA.</p> <p>(2) In case there are two founders and both founders agree to take equal shares from the paid-up capital of the company, generally, shareholder representing 100% of the total shareholder shall be present him/herself or through his/her representative to carry out the session of AGM.</p> <p>However, if the two shareholders agree to take up shares in unequal amount or even if there are more than two shareholders and agree to take up unequal shares, the session cannot be carried out without the quorum mentioned in AOA either himself/herself or a through representative.</p>

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			<p>(3) If the founder shareholder representing 50% of the shares do not come in contact or neglect the company or neglect the company's obligation or disappears, the remaining shareholders representing 50% shares shall send a letter to the permanent/temporary home address of such shareholders.</p> <p>(4) If the shareholder or his/her right holder does not come in contact even after posting the letter pursuant to Sub-Section (3), a first time 35-day public notice shall be issued on national-level newspaper to notify to the concerned person.</p> <p>(5) If the shareholder or his/her right holder does not come in contact</p>

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			<p>even after posting the letter pursuant to Sub-Section (2) and (3), a second time 15-days public notice shall be issued on national-level newspaper to notify to the concerned person and notify to the Office as well.</p> <p>(6) If those shareholders do not present themselves even after that, the other shareholder that agreed to buy 50% of the share of the paid-up capital shall convene the AGM.</p> <p>(7) This quorum mentioned in Sub-Section (6) shall also be applicable to Extra-Ordinary General Meetings, Board Meetings and the operation of the company.</p> <p>(8) Even if the AOA of a Private Limited company mentions</p>

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			otherwise, the AGM convened under Sub-Section (6) shall be deemed to have been convened under the AOA.
6	Section 13.3.a	Special Restriction for Specific Type of Company No provision	Special Restriction for Specific Type of Company However, if the paid-up capital of a specific type of company is to be more than one crore, the paid-up capital must be maintained accordingly.
7	Section 6.5	No provision	If any partnership, private firm or cooperative does not transfer share or debenture to any eligible person or company (incorporated entity) within a maximum of 1 year (with an addition of 2 years, in total 3 years), after the directive is in enforcement, no additional share can be issued on its name. In addition, no dividend or profit

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			could be acquired by investing on such share or debenture.
8	Section 4.4a	Burden of Agency Shifted to Authorized Person from Office Bearer No Provision	Burden of Agency Shifted to Authorized Person from Office Bearer The Office or any employee of the Office shall not be responsible, liable or accountable for the legality of the documents submitted to the Office related to company administration. It shall be borne by person or authorized person who submitted the documents themselves.
9	Section 21.2b	Clarity in Procedural Aspect No Provision	Clarity in Procedural Aspect The Company Registrar shall cancel the approved name if the registration document is not submitted within 3 months even after the approval of the proposed name of the company.

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10	Section 47.6	No provision	When the company collects the checklist for the purpose of fine for not submitting the details under Section 81 of the Act, the Office employee must pick up the checklist and collect the fine in such a way that the fine is neither increased nor decreased or the government does not lose revenue.
11	Section 47.7	No provision	The employee who collects the checklist will be primarily responsible for determining the fine amount of the company. If it is found that there is ill intention or the reduced fine is determined knowingly while picking up the checklist, such employee shall be recommended to the relevant agency for necessary action.
12	Section 47.8	No provision	If it is proved that the amounts of fines or other revenue that the company has to pay to the government has been

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			increased or decreased for any reason or by mistake, the Office can collect the less amount due from the concerned company at any time.
13	Section 47.9	No Provision	The Office can instruct the director of the company to pay up to the reduced fine or revenue required to be paid by the law, if not paid or paid in lesser amount than required. The entire transaction of the non-compliant company may be frozen until the payment of the fines or revenue is made. The Office can even publish the notice of non-compliance on the website of the Office.
14	Section 47.a	Errors can be corrected No provision	Errors can be corrected If the Board of Directors (the " BOD ") of the company believes that there is an error in the documents submitted to the Office, the correction can be

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			submitted once via the decision from BOD, with no compromise in the fine or revenue. For the same, the corrected documents will be deemed to have been registered (uploaded) on the previous date of submission itself.
15	Section 66.3	Identification of promoter for Liquidation No provision	Identification of promoter for Liquidation For the identification of a liquidator, the founder must appear in person at the Office, or in the presence of the chairperson, deputy chairperson, president or vice-president of the convenient local level of any district and in case of abroad, Nepali embassy or consulate general or honorary ambassador for the application presented for the liquidation of the company.
16	Section 92.a	Details can be sent electronically	Details can be sent electronically

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		No provision	<p>(1) The Office can send documents, with digital signature to the email address of the company after the completion of the work related to company registration and administration.</p> <p>(2) In order to give information about the details of company update, the Office may print a report card with bar code and make it available so that general public can view, read and examine the company details from any place.</p>
17	Section 95.a	<p>Provision related to service receival and service delivery</p> <p>No provision</p>	<p>Provision related to service receival and service delivery</p> <p>(1) Token system can be implemented for ease and proportional access</p> <p>(2) Provision for the company's director or employee or legal practitioner to be present in the</p>

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			Office with written authorization of the relevant company and an original ID card for the acquisition of service.
18	Section 95.b	<p>Special provisions regarding the transfer of shares of public limited companies that have not issued shares to the general public</p> <p>No provision</p>	<p>Special provisions regarding the transfer of shares of public limited companies that have not issued shares to the general public</p> <p>If the founder of a public limited company that has received approval for the business commencement but has not issued shares to the public, intends to sell the share or transfer rights to other for any other reason, the rights can be transferred if the board of directors makes a proper decision and receives approval from the Office. However, the accountability of the transfer of rights will remain with the board of directors of the company.</p>

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19	Section 95.e	<p>Details must be Submitted</p> <p>No provision</p>	<p>Details must be Submitted</p> <p>The decision made by the Board of Directors of the company regarding the sale of shares or the transfer of share rights after death and the details along with related documents must be submitted to the Registrar or Office, or any monitoring or concerned body or dispute investigation and settlement body when requested.</p>
20	95.f	<p>Remarks can be given</p> <p>No provision</p>	<p>Remarks can be given</p> <p>(1) The Office may issue Remarks to not accept any records relating to the buying and selling of shares or any other such transaction or work of the company and cause to stop such conduct in cases of Section 178, or if a notice of any dispute between the company's directors</p>

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			<p>or shareholders is received, or if a complaint is filed, or if the company violates the Office's instructions.</p> <p>(2) The buying and selling of shares or any such transaction of a company that has been kept in Remarks by the Office according to Sub-Section (1) or kept on hold by the court or other authorities shall be released only by the order of the Registrar.</p>
21	Section 95.g	<p>Registrar to Decide on the Matter</p> <p>No provision</p>	<p>Registrar to Decide on the Matter</p> <p>(1) Complaints registered in the Office will be dealt with and decided only by the Company Registrar and such judicial authority cannot be delegated to other employees.</p> <p>(2) After the complaint is registered in the Office, a date will be issued, according to the Summary</p>

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			<p>Procedure Act 2028 (1972), in the name of the opponent and the decision will be taken after hearing to both parties.</p> <p>(3) The Bench for hearing of the dispute registered in the Office will be determined by the Registrar.</p> <p>(4) If any of the parties to the dispute is not satisfied with the decision of the Registrar, they can file an appeal in the High Court, Patan within 35 days.</p>
22	Section 95.h	<p>Mediation Room can be determined</p> <p>No provision</p>	<p>Mediation Room can be determined</p> <p>(1) The Office can determine a Mediation Room for the parties in dispute to mediate their disputes on the complaints registered in the Office.</p> <p>(2) In order to appoint a mediator for reconciliation between the</p>

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			<p>conflicting parties of the company, the Office can issue a notice and prepare a roster of mediators by asking licensed legal professionals (pleaders, advocates or senior advocates) with knowledge and experience related to company administration to submit applications.</p> <p>(3) Before the Office takes the final action on the complaint, the registrar may appoint one or more mediators from the roster of Sub-Section (2) and order to send them for mediation. The mediator then shall give a report on whether the matter can or cannot be reconciled within the specified time.</p> <p>(4) The remuneration of the appointed mediator may be determined by</p>

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			mutual agreement of the mediator and the parties to the dispute.
23	Section 95.c	Provision related to transfer of share right after death No provision	Provision related to transfer of share right after death (1) If the shares held in the name of a shareholder of a company are transferred in whole or in part by way of donation, succession, partition or purchase and sale, the related document, the citizenship or passport of the holder of the right, the decision of the board of directors and the application for transfer of rights should also be submitted to the Office. The accountability of the decision made regarding the transfer of share rights will be with the incumbent director.

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			<p>(2) In case of the death of a director or a shareholder of the company, share ownership shall be <i>ipso facto</i> transferred to their spouse. If the surviving spouse wants to transfer the share ownership to any succeeding person or any other person, they can transfer the right via any execution/donation deed.</p> <p>(3) In the case of the death of both the spouse of a director or shareholder of the company, the share ownership can be transferred in the name of the next of kin according to the prevailing law.</p> <p>(4) In case of the death of any of the shareholders or directors of a company, that has a single shareholder or director or a family</p>

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			<p>of more than one shareholder or director or that has more than one shareholder or director from different families, the company's special general meeting can be used to form a board of directors, conduct audits and transfer share rights, and other necessary activities related to company management with the involvement of right holders of dead or family of dead persons.</p> <p>(5) When transferring the shares of the company to the right holders, if there is more than one right holder, the shares can be transferred in the name of any one person with the consent of all the right holders. If there is no agreement between the rights holders regarding the</p>

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			<p>right to shares, the rights to the shares can be maintained in the name of all the rights holders proportionally.</p> <p>(6) If the right holder is present with a notary public certified copy of the deceased shareholder's death registration certificate, proof of relationship, recommendation of the authorized body, approval of the rights holders, citizenship certificate and donation deed, the company shall allow to represent such rights holders in the general meeting on behalf of the deceased.</p> <p>(7) If the general meeting and the board of directors of the company decide based on the documents of Sub-Section (6), the company can</p>

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			register the shares of the deceased shareholder in the name of any right holder or all the right holders proportionally in the share logbook and submit them to the Office for record.
24	Section 95.d	<p>Additional provision related to transfer of share rights after the death of foreign shareholder director</p> <p>No provision</p>	<p>Additional provision related to transfer of share rights after the death of foreign shareholder director</p> <p>(1) When a foreign citizen who is a shareholder of a company located in Nepal dies and shares are transferred in the name of the right holder, the death registration certificate issued by the relevant official body of the deceased's own country, citizenship or passport or national identity card revealing the nationality of the deceased and the</p>

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			<p>right holder, the death registration certificate issued by the relevant official body of the deceased's own country citizenship or passport or national identity card revealing the nationality of the deceased and the right holder, and Proof of kinship revealing the relationship between the deceased and the beneficiary including other necessary official documents verified by Nepalese embassy or diplomatic missions abroad need to be submitted to the Office by the right holders.</p> <p>(2) Before keeping the record of the shares transferred to the right holder of the deceased foreign citizen based on the documents under Sub-Section (1), the Office can check the authority of the</p>

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			<p>documents submitted to the company through the embassy of the relevant country located in Nepal, or the Office itself can send an employee to the related country of the deceased to check the authority of the document through the Nepali embassy located abroad, by deploying staff for the investigation. The report should be submitted to the Office by the staff within the specified time. However, the expense of deploying the employee shall be borne by the company itself.</p> <p>(3) In connection with the investigation under Sub-Section (2), the Office may publish a public notice with a period limit of 35 days in two separate newspapers of the</p>

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			<p>national level in both Nepali and English language for the opposition period.</p> <p>(4) After the death of the foreign shareholder director, other actions related to the record of the transfer of share rights shall be conducted in accordance with the Company Act, Company Directive and prevailing Nepalese laws.</p>
25	Section 95.k	<p>Arrangements related to the use of Username and Password of the Company</p> <p>No provision</p>	<p>Arrangements related to the use of Username and Password of the Company</p> <p>(1) The Office will generally provide the username and password of the Company to any director authorized by the company, or company secretary or executive director or any designated official</p>

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			<p>of the company as decided by the Board of Directors.</p> <p>(2) In case of any dispute between the shareholders and directors of the company, the Office may provide the username and password to the authorized person according to the decision of the shareholders and directors representing more than fifty percent of the paid-up capital of the company.</p> <p>(3) If the disputed parties have equal shares, the Office can give priority of providing the username and password according to the decision of the director representing the majority of shareholders.</p>
26	Section 95.I	Office can implement a Simplified Program	Office can implement a Simplified Program

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			<p>(1) The Office may formulate a plan from time to time and implement a simplified program for a fixed period of time to cancel or renew (update) the registration of companies that have not submitted their details in accordance with the law.</p> <p>(2) The Office may prescribe the conditions for liquidating or renewing (updating) the company under the program as per Sub-Section (1).</p>
27	Section 95.i	<p>Record can be Nullified</p> <p>No provision</p>	<p>Record can be Nullified</p> <p>If the authority of the documents submitted by the company to the Office, related to the sale and purchase or transfer of share rights, is proved to be questionable or if such</p>

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			documents recorded in Remarks in the electronic records of the Office are accepted, or if recorded through abuse/ erroneous use of the authority delegated by the Registrar, the Registrar may nullify such documents at any time.
28	Section 95.j	<p>Arrangements related to Records Management and Update</p> <p>No provision</p>	<p>Arrangements related to Records Management and Update</p> <p>(1) Old, outdated and irrelevant documents in the file of the company in the Records Branch of the Office can be cleaned and organized according to the law.</p> <p>(2) In order to execute the cleaning and scanning of company documents and maintaining records as per Sub-Section (1), the Office can instruct the available employees to work extra</p>

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			<p>hours other than actual working hours and can also employ additional temporary human resources.</p> <p>(3) The Office may arrange additional remuneration for the employees who are engaged in extra hours of work other than the office hours for records management.</p> <p>(4) If the company has recorded two or more amendments to its AOA and MOA during its operating period, such AOA and MOA shall be re-edited and consolidated and entered into the electronic system of the Office within one year from the date of commencement of this Section.</p> <p>(5) In order to organize the work between the Office and the</p>

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			<p>company, the official mobile number of the company and the national identity card of the directors of the company must be uploaded in the electronic system of the Office within one year from the date of commencement of this Section.</p> <p>(6) When submitting the re-edited and consolidated AOA and MOA to the Office according to Sub-Section 4, a declaration made by the directors of the company stating that the AOA and MOA are not different from the previous revised AOA and MOA, shall also be submitted.</p> <p>(7) If the company's username and password are used by one director and the mobile number is used by</p>

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			<p>another director, if any dispute arises regarding update of the official mobile number, the Company will not be prevented from changing the mobile number and updating the same.</p> <p>(8) The Office may refuse to record any other details of the companies that do not update the details according to Sub-Section (4) and (5) within time.</p>

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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