

Amendment to the Companies Act 2006

Introduction

On May 2, 2017, the President of Nepal authenticated the Amendment to the Companies Act 2006 (“Companies Act”), which is effective immediately.

Notable Changes to the Companies Act

1. Adoption of Electronic Signatures – Documents relating to incorporation of a new company may be electronically signed and submitted by electronic filing. § 5(1a) added.
2. Infringement Protection Extended to Trademark – The Office of the Company Registrar (“CRO”) may decline to incorporate a new company if its name is identical or similar to the name of an existing company or trademark. § 6(1)(a) amended.
3. Increase in the Limit of Shareholders of a Private Company – The number of shareholders of a private company shall not exceed one hundred and one. § 9(1) amended.
4. Telecommunication Service Provider to be Incorporated or Converted into a Public Company – A telecom company with paid-up capital of more than NPR 50,000,000 (Fifty Million) shall be incorporated as a public company. Currently incorporated private [telecom] companies [that meet this criterion] must convert to a public company within two years. § 12 amended.
5. Fewer Requirements to Issue Shares at a Premium – A public company allowed to issue shares to the public may issue shares at a premium value pursuant to prevailing law. A private company or a public company, which is otherwise not allowed to issue shares to the public, may issue shares at a premium if its assets exceed its liabilities and if the general meeting’s consent is obtained. § 29(1) replaced.

Comparison between the Previous Sections and the Amended Sections

Section	Position Prior to Amendment	Amendment and Effect
5 (1a)	[New Section]	Incorporation documents may be signed and submitted electronically.
6 (a)	CRO may decline a company’s incorporation if its name is identical or similar to that of an existing company.	CRO may decline a company’s incorporation if its name is identical or similar to that of an existing company or trademark.
9 (1)	Maximum number of shareholders in a private limited company is 50.	Maximum number of shareholders in a private limited company is 101.
12	Companies in certain sectors (such as insurance, banking, pension funds etc.) are required to be incorporated as public companies.	Telecom companies with paid-up capital of more than NPR 50,000,000 (Fifty Million) must also be incorporated as public companies. Existing telecom companies that meet this criterion must be converted to public companies within two years.
29 (1)	Issuing shares at a premium required that the following conditions be fulfilled: <ol style="list-style-type: none"> 1. distribution of profits for the past three years; 2. assets exceed liabilities; 3. resolution by general meeting to that effect; and 4. CRO’s approval. 	Public companies listed in stock exchange may issue shares at a premium. Public companies not listed in stock exchange and private companies may issue premium shares if assets exceed liabilities and if shareholders consent.

OTHER MINOR CHANGES

1. The statutory deadline for a company's registration is reduced from fifteen days to seven days from the date of application. § 5(1) amended.
2. If a private company's shares are bought by a public company or if a private company buys a public company's shares, the private company is not obligated to convert to a public company, regardless of the percentage of shares bought or sold. § 13(1)(b) and (c); §13(4), (5), (6) and (7) omitted.
3. Each director must be present at the company's general meeting. Directors may attend the company's general meeting through video conference or similar technology. § 68 and § 75 amended.
4. Each company that holds an annual general meeting must send the CRO information about the number of shareholders and directors present in the meeting, yearly financial details, report of the Board of Directors and the auditor as well as a copy of any decision made during the general meeting. § 80(1) amended.
5. A private company may have a maximum of 11 directors. § 86(1) amended.
6. A public company with female shareholder(s) must have at least one female director. § 86(2) amended.
7. A public company may not engage in significant transactions with firms, companies or organizations that are substantially owned by a director, director's close family relative, or the company's substantial shareholder. § 93 amended. [For purposes of the Companies Act, a "substantial shareholder" refers to a shareholder who owns ordinary shares, with full voting rights, equivalent to five percent or more of a public company's paid-up capital. In case of a company with paid-up capital of more than NPR 250,000,000 (Two Hundred and Fifty Million), ownership of shares equivalent to at least one percent of total paid-up capital is sufficient]. § 50(1).
8. Unless otherwise permitted, a company may not provide loans or financial assistance to its, its parent company's or its affiliate company's officer, substantial shareholder or their close family relative. § 101(1) amended.
9. Investment companies are under no monetary ceiling for investment. § 176 amended.

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