

## **Contribution Based Social Security Bill**

Preamble: Whereas it is expedient to ensure rights of employees' over contribution based social security and to make necessary provisions related to social security for the contributors, this Act has been enacted by the Legislature-Parliament pursuant to Article 296 (1) of the Constitution of Nepal.

### **Chapter – 1**

#### **Preliminary**

1. Short title, explanation and commencement: (1) This Act shall be called as “Contributions Based Social Security Act, 2074”.  
(2) This Act shall come into force from the ninety-first day of its certification.
2. Definition: Unless the subject or the context otherwise requires, in the Act;
  - (a) “Dependent family” means any of the following relatives living jointly with the contributor: -
    - 1) Husband or wife,
    - 2) Son, daughter in law or daughter,
    - 3) Parents, in-laws (mother and/or father),
    - 4) Grandchildren.
  - (b) “Executive Director” means executive director of the Fund appointed pursuant to Section 42 of the Act.
  - (c) “Fund” means Social Security Fund established pursuant to section 26 of the Act.
  - (d) “Specified” or “as specified” means specified or as specified by by this Act or rule or by-law under this Act.
  - (e) “Ministry” means Government of Nepal, Ministry of Labour and Employment.
  - (f) “Contribution” means amount deposited or to be deposited on a regular basis by the employer and employee in order to receive benefits pursuant to the Social Security Plan. It also includes the amount deposited by an employee in informal sector as well as a self employed person.

- (g) “Contributable Income” means the basic remuneration earned on a daily, weekly, part or monthly before taxation earned by an employee as a result of direct or indirect employment.
- (h) “Contributor” means an employee, person under self-employment, person under government employment or persons entitled to receive remuneration from the government fund as prescribed by notification published in Nepal Gazette by government of Nepal, who are enlisted in the Security Plan and have received a Social Security Number.
- (i) “Employer” means a person or an enterprise engaging an employee. It shall also mean the following persons:
- 1) Manager of an enterprise,
  - 2) An employee who engages another employee,
  - 3) Recruitment agency in case of a recruited employee,
  - 4) Government of Nepal, State Government or Local Body, in the case of a person under Government Employment or in case of a person entitled to receive remuneration from Government Fund.
- (j) “Committee” means Steering Committee of the Fund established pursuant to Section 29 of the Act.
- (k) “Government Service” federal civil service, Nepal army, federal police, armed police force, central investigation bureau, provincial civil service, provincial police service or other services related to Government of Nepal, Federal Government or Local Body specified in a notification published in Nepal Gazette by Government of Nepal.
- (l) “Social Security Fund” means social security fund operated pursuant to Section 10 of the Act.
- (m) “Benefit” means benefits to be given or paid as a result of contributions made to the Social Security Plan.
- (n) “Enlisted employer” means employers enlisted pursuant to Section 19 of the Act.
- (o) “Local level” means Village Institution or Municipality.

- (p) “Self-employed person” means person specified as self-employed through notification published in the Nepal Gazette by the Ministry on the recommendation of the Committee.
- (q) “Employee” means a worker, employee or any post holding person who provides physical and mental service, who takes remuneration from the employer in return and the word shall also include a person who works in an informal sector as prescribed by the Ministry on the recommendation of the committee through a publication in Nepal Rajpatra.
- (r) “Work Force” denotes any Nepali citizen of a labour market who is economically active or can be active of age group 18 to 60 years and who are not involved in any type of employment.

**Comment [Office1]:** Literal translation of Nepali Draft means labour.

## Chapter - 2

### Provision related to Contribution based Social Security Plan

3. Social Security shall not be provided without making Contribution: Any person not making contribution to the social security plan shall not be entitled to social security as pursuant to this Act.
4. Deposit of Contribution: (1) Every enlisted employer shall deposit in the Fund, a contribution amount prescribed under section 7 from the contributable income of the employee and an additional amount prescribed in the same section, for every employee appointed by the employer or with whom an employment relation has been established.
- 2) When depositing contribution as per subsection (1) it should be deposited from the first day of enlistment of worker to the last date of employment.
- 3) Unless otherwise required by the fund, the depositing of contribution should be done every month and in case of a situation where the whole amount for a full month is not required, then it should be done on proportional basis.
- 4) The contribution amount pursuant to subsection (1) shall have to be deposited within 15 days of the end of the month for which the contribution amount has to be paid.

- (5) For any person under employment in government services or a person remunerated from government's Funds, the concerned office shall deduct prescribed contribution amount from the contributable income and deposit in the Fund.
- 5) A Worker in informal sector and a person under self-employment may participate in Social Security: (1) Any worker in informal sector or self employed person can participate in Social Security Plan, by contributing in contribution fund, an amount specified in the notice published in Nepal Gazette by the Ministry on the recommendation of the committee.
- 2) In order to encourage a worker in an informal sector or a self employed person to Social Security plan, the Government of Nepal shall deposit it in the Fund, a specified amount on the basis on the contribution made by the employee to the Social Security Plan.
- 3) In order to include workers of informal sector or persons under self employment in Social Security plan, the Fund may, co-ordinate with co-operative organizations or unions, community or any business organizations or institution.
- 4) The Fund may operate Social Security plan as prescribed, for social security of workers working in informal sector or employees under self employment.
- 6) Selection of Social Security Plan: 1) The workers working in informal sector or employees under self employment can select one or more Social Security Plans based on their contribution.
- 2) Notwithstanding anything stated in sub section (1), except as provisioned by the Fund, no employee or person under self-employment shall be entitled to subscribe some plans and reject other plans of the Social Security Plans operated by the Fund under this Act.
- 7) Contribution Rate: (1) The contribution rate of the enlisted employer or from the contributable income of the contributor shall be as prescribed by notification published in Nepal Gazette by the Ministry on the recommendation of committee.
- (2) The contribution rate pursuant to subsection (1) may be amended by publication of notice in the Nepal Gazette by the Ministry on the recommendation of Committee on the basis of employees and number of self employed people participating in the Social Security Plan, inflation rate, economic condition of Fund and number of Social Security plan.

- 8) Provision related to contribution during the non-payment of Remuneration: (1) If for some reason, there arises a situation of non-payment of remuneration due to which regular deposits to the Fund cannot be made, then the amount of contribution such an employee is required to deposit shall be deposited by the enlisted employer in the Fund on behalf of the employee for a period not exceeding three months.
- (2) The enlisted employer may make the deduction from the remuneration, allowances or other facilities, as prescribed by the law, in order to recover the amount submitted pursuant to subsection (1) on behalf of the employee.
- (9) Recovery of Contributed amount: (1) If an enlisted employer does not deposit the contribution amount in the Fund within a time limitation mentioned in section 4, then the Fund shall recover the amount including 10 percent interest from the employer.
- (2) Notwithstanding anything stated in subsection (1), if the failure by the enlisted employer to deposit the required amount of contribution in the Fund pursuant to section 4 is due to situation beyond the control of the employer, then the employer may submit an application to deposit the amount in the Fund clarifying the reason for such failure within 30 days.
- (3) If the reasons and basis in the application filed pursuant to subsection (2) is deemed reasonable then the Fund may waive partial or full interest and permit to deposit the contribution amount in the fund.
- (4) If the enlisted employers do not submit Contributions amount as required by this Act, then the Executive Director may write to the concerned officials to take any or all of the Actions mentioned hereunder till the recovery of the amount: -
- a) To freeze accounts in the banks and financial institutions.
  - b) To freeze the movable and immovable property of the concerned person's or organization's.
  - c) To suspend or freeze the discount and facilities given as per prevailing law.
  - d) To suspend the person's or organization's letter of permit or license.
  - e) To freeze the person passport.
- (5) The concerned organization shall commence the required procedure within 15 days of receipt of a letter pursuant to subsection (4).

10. Operation of Social Security Plan: (1) The Fund shall operate the following Social Security Plans pursuant to Act:-

- a) Medical Treatment and Health Security Plan.
- b) Motherhood Security plan
- c) Accident Security plan
- d) Disablement Security plan
- e) Old Age Security plan
- f) Dependent Family Security plan
- g) Unemployment Support Plan
- h) Other Security plan fixed by the Fund.

(2) The fund shall operate the Social Security plan based on priority set by the Nepal Government.

(3) The fund shall operate Social Security Plan as stated under subsection (1) in gradual stages.

(4) The contributors contributing in the Fund for a specified period shall be included in the Social Security Plan as specified on the basis of contributions made.

11. Separate Security Plans may be operated: (1) The fund may operate separate Social Security plans based on the nature of works and on the basis of needs of contributor.

(2) Notwithstanding anything mentioned in sub section (1) the Security plan shall not be operated in a manner in which there shall be difference in benefits provided to uniform or similar types of contributors.

12. Separate accounts shall be kept: (1) There shall be a separate account for every Social Security plan.

(2) The amount kept in account of one security plan shall not be used for another security plan.

(3) The amount to be deposited in the account, expenditures, operation of account and others provisions related to the Account pursuant to subsection (1), shall be as specified.

13. Participation in Social Security Plan: (1) A contributor who has contributed to the Fund shall be considered to have been subscribed to the Social Security Plan operated by the Fund, from the date of enlistment at the Fund.

(2) The contributor participating in Social Security plan pursuant to sub section (1) and their dependent family members who are specified, shall be entitled to facilities as per Social Security plan.

14. Payment of Facilities: (1) The Fund shall make payment of facilities to the contributors subscribed to the social security plan, as prescribed by the relevant security plan.
- (2) Prior to receiving any kind of facilities as provided under subsection (1), in the event of death of the contributor or whose whereabouts cannot be ascertained within the timeframe prescribed by the law, the facilities shall be given to a nominated person if nomination has been made by the contributor and if no nomination has been made, then it shall be given to their dependent family.
- (3) The payment of facilities prescribed under subsection (1) and (2) shall be made to the contributor or their dependent family members, through the Fund or through an organization collecting the contribution or from the institution providing services or through other appropriate medium as specified by the Committee.
15. Suspension or termination of Facilities: (1) Suspension and termination of services and facilities provided to the contributor pursuant to this Act shall be as prescribed.
16. Provision of Recovery: (1) If it is found through any source that, a person not participating in the Social Security Plan has received facilities as provided by this Act or has received facilities exceeding those prescribed by the Act, then the recovery of the amount from such person shall be made in a manner prescribed by the Fund.
- (2) The amount recovered as per sub section (1) shall be deposited in the Fund.
17. The Fund may issue orders: (1) If any employer does not enlist itself or an appointed employee or person with whom employment relationship has been established within time limit specified by the Act, then the Fund may issue the following orders to the employer:
- a) Immediately enlist itself and enlist the appointed employee or those people with whom employment relationship has been established.
  - b) To deposit the contribution amount required as per this Act along with the interest accumulated pursuant to section 9, from the date of the employment relation between employer and worker.
  - c) In the case of termination of employment relation between the employer and the employee, to direct the employer to make payments to the employee within the prescribed timeframe, for amount accumulated during the employment period for the facilities that the employee is entitled to pursuant to this Act.

(2) If the employer does not provide the amount pertaining to Social Security to the employee pursuant to subsection (1) (c), then the Fund shall recover such amount and provide it to the employee.

18. Other Provisions related to Social Security: (1) Notwithstanding whatsoever written in this Chapter, in order to include specified workforce in the Social Security Plan, not involved in income generating activities of regular nature, the Government of Nepal may deposit specified amount of contribution in the Fund on behalf of that workforce.

(2) Based on the contribution deposited by Nepal Government pursuant to subsection (1), such workforce shall be included in the specified Social Security plan.

### **Chapter-3**

#### **Provision related to Enlistment in Fund**

19. Notice shall be published for enlistment: (1) On the recommendation of committee, the Ministry shall publish a notice in Nepal Gazette notifying employers operating in the particular area or nature of industries, services, business or transactions, to enlist at the Fund within specified time stated under section 20.

(2) Within the specified time as per notice published pursuant to subsection (1), the employer shall submit an application in the specified format disclosing the specified details to the office of the Fund to be enlisted in the Fund.

(3) If an application is received in a specified format and with details pursuant to subsection (2), the fund shall enlist the employer and give an enlistment number in a specified format.

20. Employees shall be enlisted: (1) The employer required to enlist at the commencement of this Act, shall within 6 months of commencement of the Act and the employer enlisted after the commencement of this act, shall within 3 months of establishment of such a relationship, enlist the Fund a person appointed or with whom employment relationship has been established.

(2) If any employer does not enlist any employee in the Fund within a time specified under subsection (1), the employee may submit an application to the Fund.

(3) As a result of an application filed pursuant to subsection (2) or any other reason, if it is found out that and a person appointed or with whom employment relationship has been

**Comment [Office2]:** This provision is quite unclear, therefore have translated in its literal sense.

established, has not been enlisted by an employer upon whom this Act is applicable, then the Fund may direct the employer to enlist such an employer and the employee within a specified period of time.

(4) It shall be the duty of concerned employer to comply with the direction issued by the Fund pursuant to subsection (3).

(5) Provision related to enlistment of employee in informal sector or self employed persons shall be as specified by law.

(6) The Fund shall grant social security number as provided by section 41 to employee in informal sector or self employed persons enlisted pursuant to this Section.

21. Enlisting persons under Government Employment or persons receiving remuneration from the Government Fund: Provisions related with enlistment of employees under government service or persons receiving remuneration from the Government Fund shall be as specified by the Government of Nepal.

22. Deemed to have been enlisted: (1) After the employer has received an enlistment number or when the employee has received a Social Security Number, the employer or the employee shall be considered to have been enlisted at the Fund.

(2) Notwithstanding anything mentioned in subsection (1), an employee or a person employed under government service or a person receiving remuneration from Government Fund, who had been contributing amount in Social Security Fund pursuant to prevailing laws at the commencement of this Act, shall be considered to be enlisted at the Fund from the date of deposit of amount in the fund.

23. Record of Enlistment: (1) Provisions related to records of all persons enlisted in the Fund pursuant to this chapter shall be based on integrated computer system.

(2) The personal details and biodata of a person recorded pursuant to subsection (1) shall not be used except for the purpose of the Fund.

(3) Notwithstanding anything written under subsection (2), if such record is demanded by the authorized officials for investigation or judicial processes, the provision shall not be construed as a restraint to providing such record.

24. Information shall have to be given in case of non-employment: An enlisted employer shall have to inform to the Fund within one month, if any contributor is not under employment for any reason.

25. Employer's enlistment number not to exist: (1) In the event of dissolution or liquidation or bankruptcy of an enlisted employer established as pursuant to the prevailing law, then the enlistment number received by such an employer pursuant to section 19 shall cease to exist.
- (2) Payment of liabilities of an employer whose enlistment number does not exist pursuant to subsection (1), shall be as specified by the law.

#### **Chapter – 4**

#### **Establishment and operation of the Fund**

26. Establishment of the Fund: Social Security Fund has been established to operate and manage social security. This fund shall exist as a revolving fund.
- (2) The Fund established pursuant to sub-section (1) shall comprise of the following amounts:
- a) Amounts received as contributions from the employer and the employee for social security plan,
  - b) Pursuant to the prevailing labour laws, monthly amount of 10 percent from basic remuneration of the employee and amount added by the employer for provident fund,
  - c) Amounts to be provided by the employer to the employee for pension, gratuity and other facilities pursuant to the prevailing laws,
  - d) Amount collected in or to be collected in national level welfare fund pursuant to existing laws related to bonus,
  - e) Amount collected till the present day and to be collected in the future from Social Security Tax,
  - f) Grant received from Government of Nepal,
  - g) Grant, donations or loan amount received from foreign government, international institutions,
  - h) Interest and profit returns on investments of the Fund,
  - i) Amounts received as loan from the Government of Nepal,
  - j) Amounts received from any other source.
- (3) Amount received pursuant to sub-rule 2 (d) shall be utilized specifically to pay the employee.

- (4) The Fund shall have to receive approval from the Government of Nepal prior to receiving amount pursuant to sub-rule 2 (g).
- (5) An account shall be opened and the amount collected pursuant to sub-rule (2) in the Fund shall be deposited in an “A” category bank or financial institution, licensed to perform financial transactions pursuant to prevailing laws relating to banks and financial institutions.
- (6) Pursuant to sub-rule (5), the account of the fund shall be operated by a joint signature of the executive director and head of the accounts.

27. The Fund shall be autonomous and corporate entity: (1) The Fund shall be an autonomous and corporate entity with perpetual succession.

- (2) The Fund shall have a separate stamp for its activities.
- (3) The Fund may acquire, utilize, sell or make necessary provisions as a person with regards to movable or immovable property under its’ name.
- (4) The Fund may sue and also be sued under its name.
- (5) The Fund may enter into contracts and may exercise rights and fulfil obligations arising out of the Contract.

28. Office of the Fund: The head office of the Fund shall be located in Kathmandu valley and the Fund may establish its branch office anywhere within Nepal, as per necessity.

29. Committee: (1) There shall be a Steering Committee to operate, moderate and manage activities of the Fund, comprising of members mentioned hereunder:

- a. Secretary, Ministry of Labour and Employment – Chairperson
- b. Deputy Governor, Nepal Rashtra Bank (Overseeing regulation department) – Member
- c. Joint Secretary, Ministry of Finance (Overseeing budget and program) – Member
- d. Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs –Member
- e. Joint Secretary, National Planning Commission (Overseeing social sector) –Member
- f. Joint Secretary, Ministry of Cooperatives and Poverty Alleviation – Member
- g. Three members, with at least one female member, nominated according to procedures specified by the Ministry from among the Trade Union Federations – Members
- h. Three members, with at least one female member, nominated according to procedures the Ministry from among the Employers’ Association – Members
- i. Executive Director – Member Secretary

**Comment [Office3]:** Literal translation - as specified by

**Comment [Office4]:** Literal translation - as specified by

**Comment [Office5]:** Literal translation from Nepali document would imply “Employers” only.

- (2) The tenure of members under sub-section (1) (g) and (h) shall be four years.
  - (3) Notwithstanding anything stated in section (2), if the work performance of the members specified under sub-section (1) (g) and (h) are not satisfactory, then the Ministry may remove them from their position. However, he/she shall be given a chance to a hearing, prior to his/her removal.
  - (4) If the position of a member of the committee becomes vacant for any reason, then the same procedure which was used for the appointment in that position initially, shall be pursued in order to fulfil that position for the remaining period.
30. Meeting and decision of the Committee: (1) The Committee shall meet once in every six months and may meet any number of times as per necessity.
- (2) The date, venue and time of the meeting of the Committee shall be as determined by the Chairperson.
  - (3) The member-secretary shall, at least 24 hours prior to the meeting, notify the members of the Committee of the date, venue and time along with the agenda for the meeting.
  - (4) Notwithstanding anything stated in sub-section (3), a meeting may be called issuing a notice in a time period less than the aforementioned notification period, in case of an emergency situation.
  - (5) The quorum for meeting shall be sufficient if more than 50 percent of the members are present.
  - (6) Decision of majority of members shall be considered as the decision of the Committee. The Chair of the meeting shall vote the casting vote in case of equal votes on each side. However, when determining the contribution rates on the contributable income, higher than 20 percent from the employer and higher than 11 percent from the employee, it shall have to be done from a meeting where members pursuant to section 29 (g) and (h) are present.
  - (7) The committee may call an expert or specialist to the meeting as per necessity. The invited person shall not have the right to vote.
  - (8) The decision of the Committee shall be certified by the member-secretary.
  - (9) Other provisions related to procedures of the meeting shall be as prescribed.

31. Functions, duties and authority of the Committee: (1) In addition to functions, duties and authorities specified elsewhere in the Act, the functions, duties and authorities of the Committee shall be as follows:

- a) Draft policies related to Social Securities Plans,
- b) Provide recommendations to Government of Nepal on issues related to Social Security,
- c) Approve social security plan, budget and activities and operate and manage the fund,
- d) Draft policies for investment and submit it to the Government of Nepal for approval,
- e) Manage amounts required for efficient operation and management of various social security plans,
- f) To coordinate and monitor actions executed by the executive director,
- g) Keep updated records of personal detail of enlisted employee, person under self-employment, person under government service and all persons including people receiving remuneration from governmental fund,
- h) To regularly audit the Fund and evaluate overall economical and financial conditions,
- i) Carry out actions related to operation of Social Security Plan,
- j) Operate programs to provide employment for workforce entitled to unemployment benefits without delay,
- k) Identify additional sectors of employment in domestic labour market and conduct programs to involve the workforce in employment,
- l) To have identity cards of the contributors distributed,
- m) To comply with directions issued regularly by the Government of Nepal,
- n) Perform activities as prescribed.

(2) The Committee may delegate some of its authorities to the Chair of the Committee, member, sub-committee pursuant to Section 38 or executive director or any official of the Fund.

32. Investment of amounts of the Fund: Pursuant to the Government of Nepal approved procedures related to investment, the fund may invest in the stock or property of the Fund in any or all of the following sectors:

- (a) Invest in bonds of Government of Nepal and buy or sell such bonds,
- (b) Invest in fixed deposits or long term savings plans of “A” Class banks or financial institutions, licensed for financial activities pursuant to the prevailing banks and financial institutions laws,

- (c) Invest in banks, financial institutions or other companies limited by shares,
  - (d) Provide loans in sectors deemed appropriate by the Committee, under agreements concluded provisioning proportional division of securities (pari-passu) on a principle of joint-financialization, with banks and financial institutions established pursuant to the prevailing laws,
  - (e) Invest in debentures issued pursuant to the prevailing laws by companies or incorporated organizations, as determined by the Committee,
  - (f) Invest in approved mutual funds,
  - (g) Identify sites, construct commercial buildings and lease the property,
  - (h) Set terms, determine interest rates and give loans to companies or incorporated organizations established pursuant to prevailing laws, under the guarantee of banks and financial institutions established pursuant to prevailing laws.
  - (i) Invest in sectors deemed appropriate by the Committee after taking sufficient collateral or guarantee,
  - (j) If any asset is acquired by the Fund during the course of recovery of loan, then take necessary steps or collaborate with other institutions to utilize the assets,
  - (k) Provide loans to employees, persons under self employment, persons under government service or persons receiving remuneration from government fund, who are participants in the Fund,
  - (l) Perform other tasks related to investments of the Fund.
- (2) When investing pursuant to subsection 1 (c) in shares, investment amount shall not exceed fifteen percent of the issued capital of the bank or financial institution and when investing pursuant to subsection (e) in debentures, the investment amount shall not exceed 10 percent of the total debentures issued by such a company or incorporated institution.
- (3) When investing amounts of the fund pursuant to subsection (1) in a sector, investment amount shall not exceed 20 percent amount available in the Fund.
33. Accounts of the Fund: (1) Accounts of the Fund shall be maintained pursuant to the prevailing laws.
- (2) The Accounts to be maintained pursuant to sub-section (1) may be kept in electronic form.
34. Audit of the Fund: Books of accounts accounts and records of the Fund shall be audited by the Auditor General or Auditor appointed by him/her.

35. Provision for Internal Control System: (1) The Fund shall maintain internal control system by provisioning adequate organizational structure, managing workforce, economic transparency and information system as prescribed.
- (2) For the purpose of sub-section (1), an auditor having membership at the institution of Chartered Account incorporated pursuant to the prevailing laws, shall be appointed for the purpose of internal audit of the Fund.
- (3) When appointing an auditor pursuant to sub-section (2), the same person shall not be appointed as an auditor for more than three consecutive terms.
- (4) The remuneration, terms of service and other benefits of auditor appointed pursuant to this section shall be as prescribed.
36. Evaluation by an actuary shall be done: (1) The Committee shall have the economic condition, property, liabilities and financial situation of the Fund evaluated by an actuary every three years.
- (2) Notwithstanding anything stated under subsection (1), the Committee may have the economic situation, property, liabilities and financial condition of the Fund evaluated anytime within the period if it deems necessary.
- (3) After evaluation by the Actuary, the actuary report shall be submitted to the executive director including the following subjects:
- (a) Grounds considered for evaluation,
  - (b) Specific aspects or matters considered for evaluation,
  - (c) Total property and liability of the Fund,
  - (d) Financial situation of the fund,
  - (e) Liquidity of amounts available at the Fund,
  - (f) Steps to be taken to keep the financial situation of the Fund sound,
  - (g) Rate of contribution, facilities amount and other relevant issues regarding the Social Security Plan, for providing social security,
  - (h) Other issues as prescribed.
- (4) The executive director shall have to submit the Actuary Evaluation Report to the Committee.
- (5) Appointment, eligibility, facilities and other provisions regarding the actuary shall be as prescribed.

37. Responsibility to have audit and actuary evaluation performed: (1) The executive director shall be responsible to have the audit and actuary evaluation performed regularly.
- (2) It shall be the responsibility of every concerned personnel to assist in the audit and actuary evaluation.
38. Establishment of Sub-Committee: (1) In order to provide support for the implementation of this Act, the committee may constitute a subcommittee comprising of experts in the sectors of investment, Social Security management, auditing and other required sectors.
- (2) The functions, duties, authorities and procedures, as well as the facilities of the member of the subcommittee constituted pursuant to subsection (1), shall be as specified by the Committee during the formation of the subcommittee.

## **Chapter-5**

### **Identification, Records and Identity Document**

39. Identity of Person holding Social Security: (1) The fund shall develop a system based on information technology in order to identify persons eligible for receiving social security pursuant to this Act.
- (2) Any person receiving facilities under social security, during the commencement of this Act, shall be included in Information technology system pursuant to subsection (1) within a period specified by the Fund.
40. Record and registration of contributor receiving Social Security: (1) Contributor receiving Social Security shall be included in the record system as specified by Committee.
- (2) For the purpose of subsection (1) the Committee may collect information and personal details from all forms of record system available in Nepal.

**Explanation**: For the purpose of this section “All the record system available in Nepal” refers to personal incident registration record of Local administrative bodies, voters name list with photo along with any other personal information details prepared by Election Commission, details prepared for national identity card, details prepared for identity card record to identify economically suffering family, employee provident fund, citizen investment fund, civil service, teacher, police, armed police force and army personal registration office, private schools, public institutions and industries, company,

organization, union, firm established as per prevailing laws or worker of institution, employee, and personal records of officials.

(3) Notwithstanding anything stated in the laws, the Fund shall have access to personal details available in all forms of record systems in Nepal, for the purpose of records keeping or registration.

41. Determination of Social Security Number: (1) The Committee shall issue a social security number having fixed number of digits for each contributor affiliated to social security.
- (2) For a contributor enlisted in the Fund, the committee shall provide free identity card having Social Security number as prescribed under subsection (1).
- (3) The format of identity card provisioned under subsection (2) shall be as specified.
- (4) The Social Security to be received by the contributor pursuant to subsection (2) shall be based on identity card with social security number.
- (5) Based on the social security number pursuant to subsection (1), records of social security, income and employment and other significant information of contributor shall be kept as required by the Fund.

#### **Chapter- 6**

#### **Provision Related to Executive Director and Employee**

42. Executive Director: (1) There shall be one executive Director to perform the functions of the administrative head of Fund. Executive Director shall be accountable to Committee regarding works and responsibility.
- (2) The Committee shall form a subcommittee of comprising of three members of the Committee, to provide recommendation for the appointment of Executive Director.
- (3) The sub committee formed as pursuant to subsection (2), shall recommend a maximum of three persons having a masters' degree in Economics, Management, Labour, Commerce or Law or having fifteen years of working experience in the post of officer at a government or Non Government organization or a company or organized organization established under the prevailing laws, from those selected from an open competition, and refer to the Committee.

- (4) From among those selected persons pursuant to subsection (3), the Committee shall analyze the qualification, experience, leadership capacity, and the work plan for the management and operation of the Fund submitted by the person and shall appoint the most qualified candidate as the Executive Director.
  - (5) Notwithstanding anything stated in this Section, until the Executive director is appointed, the Ministry may select or order a gazetted first class officer of the Government of Nepal to work in the position of Executive director.
  - (6) The tenure of the executive director, appointed pursuant to subsection (4) shall be four years and may be re-elected once for a second term.
  - (7) Notwithstanding anything stated in sub section (6), the committee may remove the Executive director from the post under the following circumstances: -
    - (a) If he/she lacks the capacity to perform or cause to perform duties pursuant to this Act,
    - (b) If his/her actions, regarding tasks of the Fund, are deemed to be dishonest and bad intention,
    - (c) If his/her conduct are not suitable for post, or
    - (d) If he/she cannot perform as per the performance agreement or if its performance is not satisfactory.
  - (8) Before removing the Executive Director of the post pursuant to subsection (7), he/she shall be given an opportunity for clarification.
  - (9) Provisions related with the remuneration, facilities and terms of service of Executive Director shall be as specified.
43. Work, Duties and Authority of the Executive Director: (1) In addition to work, duties and authority mentioned elsewhere in this Act, other work, duties and authority executive director, shall be as follows:
- (a) To implemented the decision of committee.
  - (b) Prepare long term plan of fund, annual programme, budget and submit it to the Committee for approval.
  - (c) To implement the annual programme and long term plan approved by the committee.
  - (d) To submit periodical progress details of Fund to the Committee

- (e) To operate and manage on a daily basis, economic and administrative activities of the Fund and to observe, control, direct and supervise the staff of the office.
  - (f) To protect, repair and keep record of immovable, movable and property in-kind of Fund.
  - (g) To certify committee decision and keep record of it.
  - (h) To do or cause to do any other work prescribed by the Committee.
- (2) Executive director as per this act may delegate some of its authority to any officer level employee of Fund.
44. Agreement based on Work Performance: (1) The committee shall conclude a work based agreement with the Executive director prior to the appointment.
- (2) When concluding an Agreement pursuant to subsection (1), provision related to the duties, work plan and monitoring and evaluation standards shall have to be specified.
45. Provision related to appointment of Experts and Adviser: (1) For the implementation of this Act, the Fund may appoint experts or adviser in order to receive the expertise required.
- (2) For purpose of subsection (1) the Fund shall prepare list of experts and make update it regularly.
- (3) The eligibility, remuneration, service conditions, facilities and other provisions related to the appointed experts and advisers appointed pursuant to subsection (1) shall be as specified.
46. Officials of Fund: (1) There shall be a required number of employees for the purpose of the operation of Fund.
- (2) Until employees pursuant to subsection (1) have been provisioned, the Ministry shall provide the employees.
- (3) Appointment, remuneration, service condition, facilities and other provisions regarding officials of Fund shall be as prescribed.

## Chapter- 7

### Provision related to Offence and Punishment

47. Offence: (1) If any person does not deposit an amount required to be deposited in the fund pursuant to this Act within a time frame mentioned in this Act, and embezzles the amount

or receives facilities pursuant to this Act by submission of untrue or false details or receives excess facilities or does any irregularity in any programs of the social security, then such activities shall be considered offence under this Act.

(2) For offences pursuant to subsection (1), if the amount is specified then fine shall be imposed as per the amount and if such an amount is not specified, then fine or punishment not exceeding one lakh rupees or one year imprisonment or both.

(3) Any person who abets or conspires to an offence stated in subsection (1), shall be imposed half the punishment of the main culprit.

48. Investigation of offence: (1) If the Fund becomes aware of an offence committed or about to be committed, through any complain filed or from any other source directly or indirectly, then the Executive Director may appoint an officer level employee under him/her as the investigating officer to conduct investigation regarding the offence.

(2) When investigating the offence or collecting the evidence pursuant to subsection (1), the investigating officer shall have the authority to arrest a person involved in the offence, conduct search at any place related to the offence, to take into collect any document or other materials related to offence, record statements and prepare official file as well as other authorities similar to police officials under the prevailing laws.

(3) When conducting an investigation pursuant to subsection (2), if there seems to be sufficient grounds based on the the statement of the accused taken by the investigation officer and evidence collected establishing the case *prima facie*, then the investigating officer may require the accused to be present on dates, release the accused on bail or security or if the bail amount cannot be furnished then furthering the investigation by keeping the accused in custody with approval from the Officer pursuing the case every 7 days, for a period not exceeding 24 days.

(4) The investigating officer after investigation pursuant to this section, shall take opinion from the government attorney prior to filing a case under his/her name.

(5) It shall be the duty of every police personnel and everyone concerned to assist the the investigating officer for investigation under this section.

49. Provision related to Arrest: (1) If the Fund writes that a person has committed an offence under this Act and writes for arrest of the person considering the probability of him/her absconding, then the police shall arrest and present him/her before the Fund.

Comment [Office6]: literal translation "submit to"

(2) The arrested person pursuant to subsection (1) shall have to be presented before the Official pursuing the case within 24 hours of arrest, excluding the time for transportation.

50. Government of Nepal to be plaintiff: The Government of Nepal shall be the plaintiff in cases filed pursuant to this Act.
51. Provision of Fine if the Order of Fund is disobeyed: The Fund may impose a punishment not exceeding fifty thousand rupees against a person not complying with orders issued pursuant to this Act.
52. Provision related to Appeal: Any person is dissatisfied with the order or decision of Fund then may file an appeal at the relevant high court within 35 days from the day of knowing of the order or decision.

## **Chapter- 8**

### **Miscellaneous**

53. Provision related to Reserve Fund: (1) There shall be a separate reserve fund within the fund.  
(2) Provisions regarding amounts in the reserve fund pursuant to subsection (1) and its operation shall be as prescribed.
54. Provision related to other funds: (1) The Fund may, establish other funds for the purpose of operating social security programmes, as per necessity.  
(2) The provisions relating to amount to be deposited and operation of the fund prescribed under subsection (1) shall be as specified.
55. Submission of Annual Report: (1) The Fund shall submit an Annual Report to the Ministry including the expenses on Social Security, details of benefitted groups within three months of the end of fiscal year.  
(2) The details in the annual report pursuant to subsection (1) shall be as specified.  
(3) The annual report submitted pursuant to subsection (1) shall be published by the Ministry.
56. Recovery as government due: The amounts to be recovered by the Fund pursuant to this Act, may be recovered as government due.

57. Social security to be voluntary: If any person does not wish to take facilities or wishes to quit facilities received pursuant to this Act, then he/she may voluntarily reject or quit such facilities.
58. Unclaimed amount shall be deposited in the Fund: (1) If the amount to be provided by the employer to the employee pursuant to the prevailing laws or as a result of an order from the Court is not claimed by the concerned employee or a person nominated by him/her or dependent family member within 5 years, then the employer or organization or institution shall deposit the amount at the Fund within one month.
- (2) With regards to the amount received pursuant to subsection (1), the Fund shall open a separate account in a Class “A” bank or financial institution having approval to perform financial transactions pursuant to the prevailing bank and financial institutions law, and shall deposit the amount.
- (3) The amount deposited pursuant to subsection (1) shall be utilized as specified.
59. Provision Related to Assistance: (1) When performing duties pursuant to the Act, the Fund may seek assistance from professional and business organizations, local administration, concerned organizations and officials related to the employer or employee.
- (2) It shall be the duty of the concerned institution and officials to provide necessary assistance after receiving request pursuant to subsection (1).
60. Financial details to be public: (1) The Executive Director of the Fund shall prepare financial details of the Fund and submit it to the Committee every six months.
- (2) The Committee shall have to make the financial statements of the Fund public within 6 months of end of each fiscal year.
61. Insurance or reinsurance: If the Fund has undertaken any liabilities as a result of social security program, then the Fund may take insurance or reinsurance in order to share the risks arising out of such liabilities.
62. Responsibility of the Government of Nepal: If, for any reason, the amounts in the Fund are insufficient to provide benefits to the contributors participating in the Social Security Plan, pursuant to the social security plan, then it shall be the duty of Government of Nepal to ensure continuity of the Social Security Plan.
63. Dissolution of the Fund: (1) Government of Nepal may dissolve the Fund on the recommendation of the Committee.

(2) In the case of dissolution of the Fund pursuant to subsection (1), the liabilities and property of the Fund shall transfer to the Government of Nepal.

64. Non-influence of collective bargaining: (1) Provisions of this Act or rules made under this Act shall not be influenced by provisions or agreements related to collective bargaining.

65. Power to issue directives: (1) The Government of Nepal may issue directives to the Fund as per necessity.

(2) It shall be the duty of the Fund to comply with directives issued pursuant to subsection (1).

66. Communication with Government of Nepal: The Fund shall have to communicate with the Government of Nepal through the Ministry.

67. Security of Social Security Fund: The Social Security Fund pursuant to this Act shall receive concessions and facilities similar to those received by the fund established pursuant to “Employees Provident Fund Act, 2019 (1962)”.

68. Prevalence of this Act: This Act shall govern matters prescribed herein and prevailing laws of Nepal shall apply in case of other matters.

69. Power to frame rules: (1) The Government of Nepal may form necessary rules for the implementation of this Act.

70. Power to frame byelaws, directives and procedures: (1) The Fund may frame byelaws related to economic and employee administration in order to operate economic and administrative functions.

(2) The Fund may frame directives or procedures pursuant to this Act or rules or byelaws formulated under this Act.

(3) The byelaws pursuant to subsection (2) or directives or procedures pursuant to subsection (3) shall come into force after approval from the Ministry.