

The Act on Recovery of Debts of Banks and Financial Institutions, 2058(2002)

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Act number 16 of the year 2058 (2002)

First Amendment: 2063.07.19

Second Amendment: 2066.10.13

An Act made to provide for recovery of Debts of banks and financial institutions

Preamble:

Whereas, it is expedient to make provisions for the recovery of principal and interest of debts recoverable from borrowers by trying and settling cases relating to recovery of debts of banks and financial institutions in a speedy and prompt manner;

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

Chapter - 1

Preliminary

1. Short title and commencement:

- (a) This Act may be cited as the “Act on Recovery of Debts of Banks and Financial Institutions, 2058 (2002)”.
- (b) This Act shall commence on such date as may be appointed by Government of Nepal, upon a notification in the Nepal Gazette.

2. Definitions: Unless the subject or the context otherwise requires, in this Act:-

- (a) “Bank and financial institution” means a bank and financial institution as referred to in Section 3.
- (b) “Tribunal” means the tribunal established pursuant to Section 4.
- (c) “Member” means a member of the tribunal established pursuant to Section 4, and this term includes the chairman of the tribunal.
- (d) “Appellate tribunal” means the appellate tribunal established pursuant to Section 8.

- (e) “Appeal hearing authority” means the person appointed pursuant to Section 9.
- (f) “Debt” means principal and interest of a debt lent by a bank or financial institution to a borrower with or without security, mortgage of a movable or immovable property or other necessary security or guarantee, and this term includes arrears due and receivable from the off balance sheet transactions or fee, commission and interest chargeable therefor.
- (g) “Borrower” means a person, firm, company or corporate body established pursuant to the prevailing law who borrows a debt from a bank or financial institution, and this term includes a guarantor.
- (h) “Debt recovery officer” means the officer specified pursuant to Section 28.
- (i) “Prescribed” or “as prescribed” means prescribed or as prescribed in the rules framed under this Act.

3. Banks and financial institutions to which provisions of the Act apply: The provisions of this Act shall apply to cases relating to recovery of debts of the following banks and financial institutions.

- (a) Agricultural development banks established under the Agricultural Development Bank Act, 2024(1967),
- (b) Commercial banks established under the Commercial Bank Act, 2031(1974),
- (c) Nepal Industrial Development Corporation established under the Nepal Industrial Development Corporation Act, 2046 (1989),
- (d) Such other financial institutions as may be specified by Nepal Rastra Bank from time to time.

Provided, however, that the provisions of this Act shall not apply to the recovery of a debt of which principal is less than five hundred thousand rupees.

Chapter - 2

Establishment and Formation of Tribunal and Appellate Tribunal

4. Establishment and formation of tribunal: (1) Government of Nepal may, by a notification in the Nepal Gazette, establish the debt recovery tribunal, as per necessity, in order to originally try and settle cases relating to recovery of debts of banks and financial institutions.

(2) The seat and territorial jurisdiction of the tribunal to be established under sub-section (1) shall be as specified in such a notice.

(3) The tribunal shall have the members as follows.

- (a) Law member,
- (b) Banking member, and
- (c) Accounts member.

⁺(3a) Government of Nepal may increase the number of members if there are more workloads in the tribunal.

⁺(3b) The Tribunal shall have benches as per necessity if the number of members is increased pursuant to sub-section(3a) and there shall be the Law, Banking and Accounts members in each bench.

⁺(3c) In a case where there are more than one bench in the tribunal, the chairperson shall designate cases after constituting the benches to that effect.

•(4) The law member shall be the chairperson of the tribunal and if there are more than one law member, the previously appointed law member, in his absence, other law member and if there is not such a law member or he is absent, as the case may be, the previously appointed banking member, in his absence, the attending banking member, shall chair the tribunal.

(5) Notwithstanding anything contained elsewhere in this section, Government of Nepal may, by a notification in the Nepal Gazette, add territorial jurisdiction of the tribunal and give power to originally try and settle cases relating to debt recovery.

5. Appointment of member: Government of Nepal shall, by a notification in the Nepal Gazette, appoint the member from amongst the persons having possessed qualifications as referred to in Section 6.

Provided, however, that while appointing the banking member and the accounts member, Government of Nepal shall consult Nepal Rastra Bank.

6. Qualifications for member: One has to possess the qualifications as follows in order to be member.

- (a) For the law member, one who is incumbent or has already become or is qualified to become a judge of the District Court,
- (b) For the banking member, one who, having possessed at least bachelor's degree in economics or commerce, has gained at least ten years of experience in a post of at least second-class officer level post in a bank or financial institution established pursuant to the prevailing law,

⁺ Inserted by the Second Amendment

• Amended by the Second Amendment.

- (c) For the accounts member, one who, having possessed at least bachelor's degree in commerce or passed chartered accountancy or examination equivalent thereto, has obtained the auditor certificate of at least "b" class and gained at least ten years of experience in auditing of the bank or financial institution sector.
- 7. Tenure of a member:** A member shall hold office for a period of five years from the date of his appointment to the post and may be re-appointed.
- 8. Establishment of appellate tribunal:** (1) For purposes of hearing appeal against a decision made by the tribunal under this Act, Government of Nepal may, by a notification in the Nepal Gazette, establish the debt recovery appellate tribunal, as per necessity.
- (2) In establishing the appellate tribunal pursuant to sub-section (1), the seat and territorial jurisdiction of such appellate tribunal shall also be specified.
- (3) Government of Nepal may, by a notification in the Nepal Gazette, so specify that any appellate tribunal may hear appeal against an order or decision made by a tribunal outside its territorial jurisdiction.
- 9. Appointment of appeal hearing authority:** Government of Nepal may, by a notification in the Nepal Gazette, appoint any person who is an incumbent judge, or has already become or is eligible to become judge, of the Appellate Court to the post of appeal hearing authority of the appellate tribunal.
- 10. Tenure of appeal hearing authority:** The appeal hearing authority shall hold office for a period of five years from the date of his appointment to the post and may be reappointed.
- 11. Remuneration and facility:** The remuneration and facilities and other conditions of service of the member and the appeal hearing authority shall be as prescribed.
- 12. Vacation of seat:** (1) The member or the appeal hearing authority shall cease to hold his office in the following circumstances:-
- (a) If his tenure expires pursuant to this Act,
- (b) If the resignation tendered from his office is accepted by Government of Nepal,
- (c) If he is removed by Government of Nepal on ground of bad conduct or lack of competency.
- (2) Government of Nepal shall, prior to issuing an order to remove him from office pursuant to clause (c) of sub-section (1), give him a reasonable opportunity to defend himself.

13. Fulfillment of vacant post: If the post of chairman or appeal hearing authority falls vacant under Section 12 or for any other reason, the post so fallen vacant shall be filled in accordance with the procedures referred to in Section 5 or Section 9 for the remainder of his term.

Chapter - 3

Jurisdiction and Procedures of Tribunal and Appellate Tribunal

14. Functions, duties and jurisdiction: (1) Following the establishment of the tribunal pursuant to this Act, the tribunal shall have powers to originally try and settle cases on recovery of debts of banks and financial institutions under its jurisdiction.

(2) The three members shall collectively exercise jurisdiction of the tribunal. Majority opinion shall be deemed to be a decision of the tribunal.

(3) Notwithstanding anything contained in sub-section (2), if two members including the law member are present, cases may be tried and settled. Other actions except deciding a case or issuing a final order may be taken if two members other than the law member are present.

(4) If unanimity is not made while trying and settling a case in presence of two members pursuant to sub-section (3), the case shall be submitted for action and settlement in presence of the absent member, as well.

(5) If majority is not there even on submission pursuant to sub-section (4), it shall be written to the appellate tribunal for a way-out in respect of such a case.

(6) The appellate tribunal shall, following its establishment, have the final power to hear appeal against any order issued by the tribunal under its jurisdiction.

(7) Notwithstanding anything contained in this Act, a bank and financial institution may, in respect of a debt recoverable by it, file a petition on recovery of the debt only in respect whereof the following conditions are fulfilled.

(a) Ample discussions and activities were held and carried out with the borrower to settle, or cause to be settled, the debt,

(b) The bank and financial institution took adequate action on the recovery of debt but the debt could not be recovered.

15. Filing of petition with tribunal: (1) If a bank or financial institution fails to recover any amount recoverable from the borrower, it has to file a petition, accompanied by the prescribed fees, in the prescribed format, to the tribunal within the following time limit so as to have such amount recovered.

(a) In the case of debts already matured at the time of commencement of this Act, •within five years from the date of commencement of this Act.

(b) In the case of debts matured after commencement of this Act, •within four years from the date of such maturity.

(2) In filing a petition pursuant to sub-section (1), the concerned bank or financial institution has also to pay an amount to be set by 0.25 per cent of the amount claimed by it to the tribunal in advance as the debt recovery fee.

(3) No later than fifteen days of the date of receipt of the petition as referred to in sub-section (1), the tribunal has to issue a 15-day summons to the defendant to file a note of defense in order to defend him accompanied by proofs and evidence, and the defendant has to file the note of defense within that time limit.

Provided, however, that if the defendant fails to file a note of defense within the time limit because of occurrence of a circumstance beyond control and makes a petition within 15 fifteen days thereafter, setting out reasons therefor, and if the contents of such application appear reasonable, the tribunal may extend the time limit not exceeding fifteen days.

16. Power to issue interim orders: (1) If, in respect of a case under its consideration, the tribunal thinks, upon a petition of the party, that it is necessary to so withhold the security furnished for borrowing the debt or the movable or immovable property owned or possessed by, or title to which belongs to, the guarantor of the borrower as to prevent such security or property from being transferred, transmitted or sold, the tribunal may issue an interim order to the concerned office to withhold such property until another order is issued.

(2) It shall be the duty of the concerned office to observe the order as referred to in sub-section (1).

17. Period for trying and settling cases: The tribunal has to try and settle a case filed under this Act no later than one hundred fifty days from the date of submission of a note of defense where the note of defense is filed and from the date of expiration of the time limit for the filing of a note of defense where such note is not submitted.

Provided, however, that no case shall be tried and settled finally until the time limit allowed for extending the expired time limit pursuant to sub-section (3) of Section 15 is expired.

18. To read out decision: (1) Decision made by the tribunal has to be read out to the present parties or their attorneys and a deed has to be got executed by them that they have heard the decision.

• Amended by the First Amendment.

(2) If the concerned parties or their attorneys are not present at the time of making decision, information of decision has to be sent to them within seven days of making decision.

19. Appeal: (1) A party who is not satisfied with the decision made by the tribunal may file an appeal, accompanied by the prescribed appeal fee, in the prescribed format, to the concerned appellate tribunal within fifteen days of receipt of duplicate copy of the decision.

(2) No later than seven days of registration of the appeal as referred to in sub-section (1), the appellate tribunal has to give a thirty-day time limit to the defendant to file a note of defense, accompanied by proofs and evidence, for his defense; and the defendant has to file the note of defense within that time limit.

Provided, however, that if the defendant fails to file a note of defense within that time limit because of occurrence of a circumstance beyond control and makes a petition, setting out reasons therefor, the appellate tribunal may extend a time limit of fifteen days.

20. Compromise: (1) Notwithstanding anything contained elsewhere in this Act, if both plaintiff and defendant, with a view to compromising any case yet to be tried and settled pursuant to this Act, make an application on compromise to the tribunal or appellate tribunal, and both parties agree to enter into compromise after hearing the contents of the application read out to them and understanding the meanings and consequences thereof made well known to them, the tribunal or appellate tribunal may have compromise irrespective of the stage of case proceedings.

(2) For having compromise pursuant to sub-section (1), each of the plaintiff and the defendant has to pay half the compromise fee in a sum to be set by 0.50 percent of the claimed amount to the tribunal. The fee chargeable for compromise required to be so paid by the plaintiff shall be deducted from the debt recovery fee paid by him in advance, pursuant to sub-section (2) of Section 15, and collected accordingly.

(3) The tribunal so making compromise has to order the debt recovery officer to implement the compromise made pursuant to sub-section (1).

21. Implementation of decision: (1) After reading out a decision pursuant to Section 18, the tribunal has to issue an order in the name of the debt recovery officer to implement the decision, after receipt of decision of the appellate tribunal where appeal has been filed against that decision and after expiration of the time limit for appeal where appeal has not been filed.

(2) The tribunal may, in issuing an order pursuant to sub-section (1), also specify a period for the implementation of decision.

- 22. Deposit to be furnished for appeal:** In making appeal pursuant to Section 19, the borrower has to furnish cash deposit in a sum that is thirty per cent of the amount held recoverable by a decision made by the tribunal.
- 23. Period for settling appeal:** The appellate tribunal has to finally settle an appeal made under this Act within ninety days from the date of submission of a note of defense of appeal where such note of defense has been submitted and from the date of expiration of the time limit for submission of a note of defense where such note of defense has not been submitted and send information thereof to the concerned tribunal no later than fifteen days from the date of final settlement.
- 24. Powers and procedures of tribunal and appellate tribunal:** (1) In trying and settling cases filed under this Act, the tribunal and the appellate tribunal may determine their procedures on their own, subject to this Act or the rules framed under this Act.
- (2) In trying and settling cases filed under this Act, the tribunal or the appellate tribunal shall have the same powers including to issue summons, summon presence of petitioner, defendant, witness, administer oath, take deposition, examine proofs, evidence and necessary documents or statements, require submission of documents, require furnishing of security and impose punishment as the court of law has under the prevailing law.

Chapter - 4

Procedures of Debt Recovery

- 25. Procedures of debt recovery:** (1) Upon receipt of an order of the tribunal, the debt recovery officer has to recover the debt amount from the borrower within the time limit specified in that order and get it provided to the concerned bank and financial institution.
- (2) In recovering the principal and interest of a debt, the debt recovery officer may follow the following procedures, subject to the prevailing law.
- (a) To take possession of, or auction, the borrower's other movable or immovable property whether furnished as security or not,
- (b) To take possession of, or auction, the guarantor's movable or immovable property,
- (c) Where any individual is a borrower or guarantor, to arrest such individual and detain him pursuant to the prevailing law.

26. Liability of guarantor: (1) The liability of a guarantor furnishing guarantee for a borrower shall be limited only to the amount of guarantee furnished.

(2) Notwithstanding anything contained in the prevailing law, the liability referred to in sub-section (1) may be realized directly from the guarantor.

27. Order of debt recovery office to be equal to that of tribunal: (1) Any order given by the debt recovery officer under this Act in respect of recovery of a debt shall be equal to an order given by the tribunal, and it shall be the duty of all the concerned to carry out such order.

(2) If any person disobeys any order given by the debt recovery officer under this Act, the tribunal may institute contempt proceedings against that person pursuant to Section 30.

Chapter - 5

Miscellaneous

28. Designation of debt recovery officer: (1) Government of Nepal may designate at least the gazetted second class officer as the debt recovery officer.

(2) The functions, duties and powers of the debt recovery officer shall be as prescribed.

29. Provisions relating to other employees: Government of Nepal may provide required employees for the operation of functions of the tribunal or appellate tribunal, in addition to the debt recovery officer.

30. Power to institute action on contempt: (1) The tribunal or appellate tribunal may institute action on its contempt.

(2) If the tribunal holds that its contempt has been committed, it may punish the accused with a fine not exceeding one thousand rupees or with imprisonment for a term not exceeding one months or with both.

(3) If the appellate tribunal holds that its contempt has been committed, it may punish the accused with a fine not exceeding five thousand rupees or with imprisonment for a term not exceeding three months or with both.

(4) Notwithstanding anything contained in sub-section (1) or (2), if the accused begs a pardon to the satisfaction of the concerned tribunal or appellate tribunal, it may pardon him without subjecting him to any punishment or lessen or pardon punishment where punishment has already been specified or issue an order to suspend punishment and not to execute punishment if the specified terms are observed.

31. Payment of amount by bank and financial institution: (1) After a debt has been recovered under this Act, the concerned bank and financial institution have to pay one percent of the debt amount to the tribunal for the debt recovery fee. In so paying the debt recovery fee by the bank and financial institution, it has to pay only the amount that remains after deducting the amount paid by it under sub-section (2) of Section 15.

(2) The tribunal has to deposit the amount paid pursuant to sub-section (1) with the consolidated fund as prescribed by Government of Nepal.

32. Transfer of cases: The debt related cases falling under jurisdiction of this Act and awaiting judgment by the District Court and the Appellate Court shall be transferred to the concerned tribunal or appellate tribunal.

33. Power to frame rules: Government of Nepal may frame necessary rules in order to implement the objectives of this Act.

The Regulation on Recovery of Debts of Banks and Financial Institutions, 2059(2002)

Date of publication in Nepal Gazette: 2059.8.12 (30 January 2002)

First Amendment: 2060.10.29(12 February 2004)

In exercise of the powers conferred by Section 33 of the Act on Recovery of Debts of Banks and Financial Institutions, 2058(2002), Government of Nepal has framed the following rules.

Chapter - 1 Preliminary

- 1. Short title and commencement:** (1) These rules may be cited as the “Regulation on Recovery of Debts of Banks and Financial Institutions, 2059(2002)”.
(2) This Regulation shall commence forthwith.
- 2. Definitions: Unless the subject or the context otherwise requires, in this Act,-**
 - (a) “Act” means the Act on Recovery of Debts of Banks and Financial Institutions, 2058(2002).
 - (b) ”Petition” means a petition filed by a bank or financial institution with the tribunal pursuant to sub-section (1) of Section 15 of the Act.
 - (c) “Registrar” means an officer designated by Government of Nepal to carry out acts pertaining to general administration of the tribunal or appellate tribunal pursuant to Rule 32.

Chapter - 2 Provision Relating to Petition

- 3. Petition to be filed:** In filing a petition, a bank or financial institution has to file the petition with the tribunal in the format as referred to in Schedule-1, accompanied also by a petition fee of five rupees and amount for the debt recovery fee in a sum to be set by 0.25 percent of the claimed amount.

- 4. Matters to be set out in petition:** A petition to be filed pursuant to Rule 3 has to set out the following matters:
- (a) Full name, surname and address of each of petitioner and defendant,
 - (b) Whether the petition has been filed within the time limit of the Act, and whether the petition fee and amount to be paid in advance for the debt recovery have been accompanied thereby or not,
 - (c) Whether the bank or financial institution has, in respect of the recovery of the debt, made or held correspondences, discussions or negotiations with the borrower at several times or carried out rescheduling or restructuring of the debt or similar other acts or not,[•]
 - ⁺(c1) Whether the commercial bank or financial institution has, in respect of the recovery of the debt, published a public notice in a newspaper of national circulation to the effect that if the borrower fails to repay the debt within the time limit specified by it in that notice, necessary action shall be instituted against the borrower or a public notice on the auction sale of the movable or immovable property furnished as the security with the bank or financial institution or not, or whether the movable or immovable property furnished as the security has been auctioned even on the action of auction sale of such security or not,
 - (d) Whether any suit has been filed in any office or court on the recovery of debt from the borrower pursuant to the prevailing law or not,
 - (e) In the case of more than one defendant, whether sufficient copies of the petition have been attached so that they may be sent to all of them or not,
 - (f) Whether necessary evidence and documents in corroboration of the claim mentioned in the petition have been attached or not.
- 5. Non-registration of petition not in order:** The Registrar has to endorse a received petition which does not set out the matters required to be set out or is not accompanied by the documents required to be accompanied by pursuant to Rule 4 by indicating in such petition that it does not meet the requirements, and return it to the concerned bank or financial institution.
- 6. Registration of petition and issuance of receipt:** If a petition filed by a bank or financial institution appears to meet the requirements pursuant to the Act and this Regulation, the Registrar has to register such a petition and give a receipt thereof to the concerned bank or financial institution.

[•] Amended by the First Amendment.

⁺ Inserted by the First Amendment.

- 7. Inquiry into and dismissal of petition:** (1) After the filing of a petition, the tribunal has to enquire into the following matters in that respect.
- (a) Whether the grounds of claim for recovery of debt are clear or not,
 - (b) Whether the evidence and documents accompanied by the petition are adequate to corroborate the claim or not.
 - (2) If the tribunal thinks, upon an inquiry pursuant to sub-rule (1), that the grounds for claim mentioned in the petition are not clear and thus the claim cannot lie, it may dismiss the petition.
 - (3) If the tribunal thinks that the claim cannot be substantiated from the evidence and documents attached with the petition, it may give a time limit of seven days and order the concerned bank or financial institution to submit additional necessary evidence and documents. If the concerned bank or financial institution fails to submit additional necessary evidence or documents within the time limit so specified or if it appears that the claim cannot be substantiated from the submitted documents, the tribunal may dismiss such a petition.
 - (4) If the tribunal dismisses a petition pursuant to sub-rule (2) or (3), it has to give information thereof to the concerned bank or financial institution no later than seven days from the date of dismissal of petition.

Chapter - 3

Provisions on Service of Summons and Examination of Evidence

- 8. Issuance of summons for filing of note of defense:** (1) No later than fifteen days from the date of registration of a petition in the Tribunal, the Tribunal has to issue the summons, also accompanied by one copy of the petition, • in the name of the concerned defendant, in the format as referred to in Schedule-2.

(2) The summons issued pursuant to sub-rule (1) has to be served by delivering it to the defendant or any Member of his own family. If the defendant or any Member of his own family is not found or his house or dwelling is not traced in so delivering the summons, the summons has to be posted in the public place where the house or dwelling is located in presence of any Member of the concerned village development committee or municipality or of any two local persons; and after the summons has

• Amended by the First Amendment.

been so posted, it shall be deemed to have been duly served notwithstanding anything contained in the prevailing law.

Provided, however, that in cases where the defendant or his house or abode has not been traced because of the fact that the bank or financial institution has indicated a wrong address or the Tribunal has mentioned a wrong address, the summons shall not be deemed to have been duly served despite that it has been so posted.

(3) An employee who goes to serve the summons referred to in sub-rule (2) has to complete the service of summons generally⁺ within two days except the time required for journey.

(4) Notwithstanding anything contained elsewhere in this Regulation, in issuing the summons to be served on a defendant who is a firm, company or body for the submission of a note of defense, if the summons is sent by a registered post to the registered office of such a firm, company or body or sent through telefax, email or other electronic communication means of such office, such summons shall be deemed to have been duly served. _____•.

9. Extension of time limit: (1) If, as a result of expiration of the time limit of the summons issued to the defendant to submit a note of defense pursuant to Rule 8 because of the occurrence of a circumstance beyond control of the defendant, the defendant is unable to submit the note of defense and the defendant makes an application, setting out the reasons therefor, to the Tribunal for having the expired time limit extended, no later than fifteen days from the date of expiration, and the contents of such an application appear to be reasonable, the Tribunal may extend a time limit of a maximum of fifteen days for the applicant or defendant to submit the note of defense.

(2) If any petitioner or defendant who is to make appearance on a fixed day in any case under consideration pursuant to the Act and this Regulation fails to make presence on such a fixed day, he shall not be allowed to have the expired day for appearance extended.

Provided, however, that if the fixed day for appearance expires because of occurrence of a circumstance beyond control of the petitioner or the defendant and an application is made to the Tribunal no later than fifteen days from the date of expiration, and the contents of such an application appear to be reasonable, the Tribunal may extend it for a maximum period of fifteen days for the petitioner or the defendant.

⁺ Inserted by the First Amendment.

• Amended by the First Amendment.

10. Examination of evidence: (1) The petitioner has to submit the original copy of documentary evidence that is to remain with him by virtue of its nature or that he may submit and one duplicate copy thereof along with the petition.

(2) The defendant has to submit the original copy of documentary evidence that is to remain with him by virtue of its nature or that he may submit and one duplicate copy thereof along with the note of defense.

(3) The documentary evidences not having submitted pursuant to sub-rule (1) and (2) by the plaintiff or the defendant shall not be examined or taken as evidence in future.

Provided, however, that documentary evidence may be submitted or examined as follows in the following circumstances.

(a) In the case of documentary evidence that cannot be submitted to the Tribunal, only a duplicate copy thereof may be submitted.

(b) If the petitioner or the defendant does not know or obtain any new or important documentary evidence at the time of filing or submitting the petition or note of defense despite his best effort and makes an application to the Tribunal to submit such evidence after he knows or obtains it and the matter appears to be reasonable, the Tribunal may execute a memorandum and examine such documentary evidence.

(c) If the petitioner or the defendant, showing a reasonable reason makes an application for appointment of another day for submitting any documentary evidence, the Tribunal may specify another day to give him a reasonable opportunity to submit that documentary evidence.

(4) On the day specified for the examination of evidence and proof, the original documentary evidence of the petitioner has to be shown and read out to the defendant and that of the defendant to the petitioner and get him to make deposition as to whether it is genuine, forged or fake whatever he says. If in so getting him to record his deposition, he is not able to name it as genuine, forged or fake at the moment and the Tribunal holds to give a time limit at its discretion, it may give a time limit not exceeding three days.

(5) After the petitioner or the defendant has submitted the documentary evidence mentioned as such in the petition or the note of defense to the Tribunal, the *Registrar* has to prepare a duplicate copy thereof, verify such copy with the original, get the petitioner or the defendant who has submitted that document to write the duplicate copy corresponds to the original in that document and sign it if the copy verifies with the original, and retain it in the case file.

(6) The original documents as referred to in sub-rule (5) have to be given consecutive number and the office seal stamped on the reverse thereof; and such original documents have then to be returned to the concerned person.

11. Submission of evidence by other on behalf of absent defendant: If any heir of the same family of the defendant or any other person, showing any reasonable reason for failure of the defendant to submit a note of defense in any case within the time limit issued under this Regulation, submits any evidence refuting the petitioner's claim no later than seven days from expiration of that time limit, the tribunal has also to examine that evidence too and try and settle the case.

12. Party need not keep on appearing on appointed day: (1) After the tribunal has examined the evidence of both petitioner and defendant, any party may, if he so intends, not keep on appearing on the appointed day, with the permission of the tribunal.

(2) Even if the petitioner only or the defendant too expires the appointed day for presence after the petitioner has submitted his evidence, the case has not to be dismissed but it has to be tried and settled based on the evidence examined.

13. Examination of witness: (1) Following an order by the tribunal for issuing summons in the name of witness, the Registrar has to prepare and send the summons.

(2) In sending the summons by the Registrar pursuant to sub-rule (1), a time limit of seven days has to be given.

14. Deposition of witness: (1) The Registrar has to obtain name list of their witnesses from the petitioner and the defendant present on the day appointed for presence immediately upon commencement of tribunal's action on that day, retain the list in the case file and submit the same to the tribunal for deposition.

(2) Even if the other party be not present by two p.m. on the day appointed for examination of witness, making deposition of the witness of the party present has not to be stopped.

15. Power to issue order for submission of documentary evidence: In cases where any document, design, information, detail etc. that can be taken as evidence under the prevailing law has not been submitted to the tribunal for any reason, the tribunal may order the concerned party to submit such evidence to the tribunal prior to enlistment of the case in the cause list.

Chapter - 4

Provisions Relating to Decision

- 16. Period for decision:** After a case has become matured upon examination of the required evidence by the tribunal from the petitioner or defendant, the tribunal has to decide the case no later than fifteen days from the date of its maturity for decision, subject to the period of time specified by Section 17 of the Act.
- 17. Format of decision and order:** Any decision to be made by the tribunal shall be in the format referred to in Schedule-3 and other order in the format referred to in Schedule-4.
- 18. Prohibition on alteration in decision or order:** Any decision or order already signed by the members has not to be altered in any other manner except correction of minor grammatical and type errors.
- 19. Implementation of decision:** (1) After the tribunal has made a decision, and issued an order to the debt recovery officer for implementation of that decision pursuant to Section 21 of the Act, that decision has to be implemented within the period indicated in that order.
- (2) If the debt recovery officer be in need in the course of implementation of a decision pursuant to sub-rule (1), he may seek assistance of the local administration and police. If assistance is so sought by the debt recovery officer, the local administration and police have to render assistance to the officer.
- 20. Execution of compromise:** (1) If it has been so decided by the tribunal or appellate tribunal under sub-section (1) of Section 20 of the Act that compromise can be made, the concerned parties have to execute the compromise on their own.
- (2) If the tribunal or appellate tribunal has issued an order to the debt recovery officer pursuant to sub-section (3) of Section 20 of the Act because of failure of one party to execute compromise pursuant to sub-rule (1), he has to get the compromise executed.
- (3) The procedures for execution of compromise pursuant to sub-rule (2) shall be the same as the procedures for implementation of the decision made by the tribunal or appellate tribunal.

Chapter-5

Provisions Relating to Appeal

21. Making of appeal: In making appeal against a decision made by the tribunal pursuant to the Act and this Regulation, a memorandum of appeal has to be filed in the tribunal in the format referred to in Schedule-5, accompanied by a fee of five rupees.

22. Matters to be set out in memorandum of appeal: The following matters have to be set out in the memorandum of appeal to be filed pursuant to Rule 21.

- (a) Appellant's name, surname and address,
- (b) Name, surname and address of person or body to be named as respondent,
- (c) Name of tribunal having made decision with which the appellant is not satisfied,
- (d) Matter of being petitioner or defendant in the case of first instance,
- (e) Date of decision and details thereof,
- (f) Amount in controversy as claimed in the case of first instance and amount set in such case,
- (g) Matters of dissatisfaction in the decision, reasons therefor and matters demanded in the appeal,
- (h) Where the amount in controversy has not been set out in the case appealed, estimated value of such amount,
- (i) Matter whether the appellant knows as to any appeal made by other party or respondent, if any,
- (j) Matter that under which law appeal is made,
- (k) Matter that appeal is within the limitation,
- (l) Other necessary matters.

23. Examination and registration of memorandum of appeal: (1) Any appeal received by the appellate tribunal has to be examined whether it meets the requirements under Rules 21 and 22, and such memorandum of appeal has to be registered if it meets such requirements, and a proof thereof has to be given to the concerned appellant.

(2) If the memorandum of appeal does not appear to meet the requirements upon its examination pursuant to sub-rule (1), the matter that it does not so meet the requirements has to be mentioned and endorsement made, and such memorandum of appeal has to be returned.

24. Procedures following registration of memorandum of appeal: (1) The appellate tribunal has to procure the case file of the case of which memorandum of appeal has been filed from the concerned tribunal.

(2) After the appellate tribunal has received the case file procured by it pursuant to sub-rule (1), the Registrar has to specify the day for presence for trial and settlement of that appeal, enter the case in the weekly and daily cause list and refer it to the appellate tribunal.

(3) The memorandum of appeal and deed of attorney (Vakalatnama) submitted in the case shall all be recorded in the appellate case file.

25. Issuance of summons for filing note of defense: (1) After registration of a memorandum of appeal in the appellate tribunal, the appellate tribunal has to issue summons, also accompanied by one copy each of the memorandum of appeal and evidence and document attached with it, in the name of the concerned respondent, in the format as referred to in Schedule-6, for filing a note of defense.

(2) In issuing the summons under sub-rule (1), the procedures referred to in sub-rules (2), (3) and (4) of Rule 8 have to be followed.

26. Extension of time limit: If the time limit of summons issued to the respondent to submit a note of defense pursuant to Rule 25 expires because of occurrence of a circumstance beyond control and the respondent makes an application, setting out the reasons therefor, no later than fifteen days, the appellate tribunal may extend the time limit for a maximum of fifteen days pursuant to rule (9).

Chapter –6

Provisions Relating to Debt Recovery

27. Functions, duties and powers of debt recovery officer: (1) If, upon receipt by the debt recovery officer of the tribunal order, the movable and immovable property furnished as security by the borrower or the guarantor cannot satisfy the principal and interest of the debt, and the debt has to be recovered also from other movable and immovable property of the borrower or the guarantor, he has to immediately write to the concerned office to withhold such movable and immovable property.

(2) Upon receipt of the tribunal's order, the debt recovery officer has to get the debt recovered as follows, subject to the time limit specified in that order.

- (a) To give an order to the borrower to repay in full the principal and interest of the debt repayable by him to the bank or financial institution, by giving a time limit of seven days in maximum,
- (b) If the borrower does not repay the principal and interest of such debt within the time limit referred to in clause (a), to take possession of movable and immovable property whether or not subject to security furnished by the borrower,
- (c) If the movable and immovable property subject or not subject to security furnished by the borrower does not satisfy the principal and interest of the debt and someone has furnished guarantee, to take possession of the movable and immovable property belonging to such guarantor,
- (d) To auction the movable and immovable property taken into possession pursuant tot clause (b) or (c).

28. Procedures relating to debt recovery: (1) In cases where the movable and immovable property furnished as security by the borrower or as guarantee by the guarantor is being possessed and enjoyed by him, and possession of such movable and immovable property has to be detached from him, the debt recovery officer has to enter the place where such property is located in presence of at least two local people and representative of the concerned bank or financial institution; and in so taking possession, an inventory of the movable and immovable properties so possessed has to be prepared and a deed executed to that effect.

(2) If the property taken into possession does not satisfy the principal and interest of the debt and other movable, and immovable property of the borrower has to be detached from his possession, the debt recovery officer has to enter the place where such property is located in presence of at least two local people and representative of the concerned bank or financial institution and take the property in his possession; and in so taking possession, an inventory of the movable and immovable property so possessed has to be prepared and a deed executed to that effect.

29. Procedures of auction sale: (1) The Debt Recovery Officer has to recover the debt by auctioning the movable and immovable property taken into his possession pursuant to Rule 28.

•(2) In making an auction pursuant to sub-rule (1), a notice inviting a sealed tender or auction bid for the purpose of the auction sale has to be published in a daily newspaper of national circulation, by giving a time limit of thirty five days in the case of an immovable property and that of fifteen days in the case of a movable property.

• Amended by the First Amendment.

•(2a) A sealed tender made upon the notice published pursuant to sub-rule (1) has to be opened and evaluated in the presence of a representative of the local administration and the tendered or his representative. In making such evaluation, the tender of the tendered who has quoted the highest value has to be accepted, subject to the value fixed pursuant to sub-rule (3), and the property has to be auctioned to that tendered.

•(2b) In making an auction sale on the basis of auction bid upon the notice published pursuant to sub-rule (1), the property has to be auctioned subject to the value fixed pursuant to sub-rule (3), in the presence of a representative of the local administration and at least two local people.

(3) Prior to selling movable and immovable property by auction pursuant to sub-rule (1), the Debt Recovery Officer has to fix the value of such movable and immovable property in presence of a representative of the local administration, a representative of the District Land Revenue Office and a representative of the local body, also having regard to the prevailing market rate of such property. In so fixing the value of a movable and immovable property, the concerned expert may also be consulted. •

(4) In auctioning pursuant to •sub-rule (2a) or (2b), if the value offered is less than the value of such movable and immovable property fixed pursuant to sub-rule (3), a notice shall be published for the next time in a newspaper of national circulation by giving a time limit of fifteen days in the case of immovable property and of seven days in the case of movable property and such property shall then be auctioned.

(5) If, even if in auctioning the movable and immovable property pursuant to sub-rule (4) for the second time, the value offered is less than the value of such movable and immovable property fixed pursuant to sub-rule (3), a notice shall be published in a newspaper of national circulation by giving a time limit of ten days in the case of immovable property and of five days in the case of movable property and such property shall then be auctioned. If, even if in so auctioning for the third time, the value offered is less than the value of such movable and immovable property fixed pursuant to sub-rule (3), the concerned bank or financial institution has to accept and buy such movable and immovable property at the fixed value/price. After that bank or financial institution has so accepted and bought that movable and immovable property, the account shall be adjusted as if the debt of such bank or financial institution were repaid. •

Explanation: For purposes of this Chapter, a movable property means any movable property except cash.

• Amended by the First Amendment.

+29A. Expenditure incurred in auction sale: (1) The Debt Recovery Officer shall, in recovering the debt by auctioning the movable and immovable property taken in his possession pursuant to Rule 28, get the amount, which is receivable by the concerned bank or financial institution, provided to such bank or financial institution from the proceeds of the auction sale remaining after the deduction of all the expenditures incurred in the course of making such auction sale from such proceeds.

(2) The amount which remains after deducting all the expenditures incurred in the course of making the auction sale pursuant to sub-rule (1) and the amount, which is receivable by the concerned bank or financial institution from the proceeds of such sale has to be refunded to the concerned borrower or guarantor.

(3) Notwithstanding anything contained in sub-rule (1), the Tribunal may, if it considers necessary, require the concerned bank or financial institution to furnish in advance an amount of expenditure estimated to be incurred in the auction sale of the movable and immovable property, prior to making such sale of such property.

+29B. Reward: If, in a circumstance where a debt repayable to a bank or financial institution is not sufficiently repaid up from the value of the property furnished by the borrower or guarantor for the security of the debt and any other property of the borrower or guarantor is not found out, any person gives a written information to the Tribunal about any property of such borrower or guarantor and such property is found on the basis of such information, the Tribunal shall give a reward in a sum to be set by 5% of the proceeds of sale of such property to such person from such proceeds.

30. Execution: (1) The Debt Recovery Officer has to give the person who buys a movable and immovable property through auction pursuant to Rule 29 a possession slip of such movable and immovable property and execute possession of such movable and immovable property.

(2) In executing possession pursuant to sub-rule (1), the Debt Recovery Officer may, if required, seek assistance of the local administration and police. It shall be the duty of the local administration and police to render assistance to the Debt Recovery Officer if such assistance is so sought.

+ 30A. Detention: If any individual borrower or guarantor is to be held in detention pursuant to clause (c) of sub-section (2) of Section 25 of the Act, a request has to be made to the concerned police office to detain such individual; and where such a request is made to it, the concerned police office has to detain such individual.

31. Application to be made to institute action for contempt: (1) In instituting action for contempt pursuant to sub-section (2) of Section 27 of the Act, the Debt Recovery

⁺ Inserted by the First Amendment.

Officer has to make an application setting out the matter to the Tribunal or Appellate Tribunal.

If the Tribunal or Appellate Tribunal receives the information pursuant to sub-rule (1) that any person has violated an order given by the Debt Recovery Officer, the Tribunal or Appellate Tribunal may institute action on contempt against such person pursuant to Section 30 of the Act.

Chapter - 7

Provisions Relating to Registrar

- 32. Designation of Registrar:** Government of Nepal has to designate one officer level employee of the gazetted third class of Nepal Judicial Service to act as the Registrar of the tribunal or appellate tribunal, in order to carry out functions relating to general administration of the tribunal or appellate tribunal, subject to general direction and control of such tribunal and appellate tribunal.
- 33. Functions, duties and powers of Registrar:** In addition to the functions, duties and powers mentioned elsewhere in this regulation, the functions, duties and powers of the Registrar shall be as follows.
- (a) To examine and verify documents including petitions, notes of defense and memoranda of appeals to be filed with the tribunal or appellate tribunal and register them if they meet requirements or endorse them with reasons if they cannot be registered,
 - (b) To verify duplicate copies submitted in a case with the originals and certify them if they appear in order, and if the originals appear to have some defects, to mention such defects and get the concerned party to sign to that effect,
 - (c) To verify whether documents submitted along with petitions, memoranda of appeal and notes of defense are correct or not,
 - (d) To issue summons and get it served,
 - (e) To appoint days for appearance in cases, indicating reasonable reasons pursuant to law,
 - (f) To obtain power of attorney and get a case assumed pursuant to prevailing law,
 - (g) To promptly execute, or cause to be executed, actions as referred to in the order made by the Bench,
 - (h) To have security or guarantee as per the order made by the Bench,
 - (i) To maintain, or cause to be maintained, updated records including registration books,
 - (j) To maintain personal records of employees,
 - (k) To safely retain orders and directions in a serial order.

Chapter - 8

Provisions Relating to Remuneration and Facilities

- 34. Remuneration of member of tribunal and appeal hearing authority:** (1) The members of tribunal shall receive such monthly remuneration as prescribed by Government of Nepal.
- (2) The appeal hearing authority shall receive such monthly remuneration as prescribed by Government of Nepal.
- 35. Housing facility:** (1) Monthly facility of five thousand rupees shall be given to the members of tribunal and the appeal hearing authority for the housing facility.
- Provided, however, that no housing facility shall be given to the member of tribunal or the appeal hearing authority who has own house in the district where the tribunal or appellate tribunal is located.
- (2) Notwithstanding anything contained in sub-rule (1), a monthly lump sum of two thousand five hundred rupees shall be given to the member of tribunal or the appeal hearing authority who is not entitled to the housing facility, for house repairing and sanitation expenses.
- 36. Vehicle and fuel facility:** One motor vehicle with a driver and one hundred liter of petrol or diesel on monthly basis and five liters of mobil on tri-monthly basis shall be given to each member of tribunal and appeal hearing authority.
- 37. Electricity, water and telephone facility:** (1) Expenditure to be incurred in installing one line telephone in the residence of the member of tribunal and the appeal hearing authority and amount chargeable for deposits therefor shall be provided.
- (2) A monthly sum of one thousand five hundred rupees shall be provided in lump sum for tariff of electricity, water supply and telephone installed in the residence of the member of tribunal and the appeal hearing authority.
- 38. Dashain expenditure:** A sum equal to one month's remuneration shall be provided to the member of tribunal and the appeal hearing authority each year for the Dashain expenditure.
- 39. Other facilities:** Provident fund, gratuity and pension, insurance, medical facility, daily and traveling allowance for home country and foreign travel, leave and other facilities shall be as prescribed by Government of Nepal.

Chapter - 9 Miscellaneous

- 40. Power to have bench elsewhere:** The tribunal or appellate tribunal may, in view of volume of petitions or appeals, have its bench in any other place under its jurisdiction for any certain period and carry out its activities.
- 41. Provisions relating to duplicates:** The concerned person may get duplicate copies of any document whatsoever attached with the case file of a case filed in the tribunal or appellate tribunal by paying two rupees for each page.
- 42. Safety of case files, documents:** (1) It shall be the duty of *Registrar* to secure the case files and documents in the Tribunal or Appellate Tribunal.
- (2) Except with the order of the Member of Tribunal or the appeal hearing authority, no case file, document and record, book in the Tribunal or Appellate Tribunal shall be taken out and shown to any unauthorized person.
- +42A. Power to have representation:** (1) A bank or financial institution making a petition, complaint, appeal or note of defense or a borrower may appoint any legal practitioner or accounts practitioner as its/his representative and get represented by such representative in the Tribunal or Appellate Tribunal.
- (2) Notwithstanding anything contained in sub-rule (1), a bank or financial institution may appoint any of its employees as its representative and get it represented by such representative in the Tribunal or Appellate Tribunal.
- +42B. Service of summons outside Kathmandu Valley:** If the Tribunal or Appellate Tribunal is to serve the summons in a place outside the Kathmandu Valley, it may depute any of its employees or request the concerned District Court to serve the summons; and the summons shall be served or caused to be served accordingly.
- 43. Oath:** The member of tribunal and the appeal hearing authority shall, prior to taking up responsibilities of their respective offices, take an oath of own office before the chief judge of the concerned Appellate Court in the format referred to in Schedule-7.
- 44. Uniform of member:** The member and the appeal hearing authority has to put on a black cap, black coat and black shoes while on bench.
- 45. Prevailing law to prevail:** The matters contained in this Regulation shall be governed by this Regulation and other matters by the prevailing law.

⁺ Inserted by the First Amendment.

Schedule-1
(Relating to Rule 3)

Petition filed in tribunal _____

Subject _____

_____Petitioner

Vs.

_____Defendant

I/we, the petitioner(s) hereby petition as follows.

1. _____
2. _____
3. _____

It is, therefore, petitioned that, in this matter, an order of such matter be issued to so and so person pursuant to so and so Act and Regulation.

The contents of this petition are true and correct. If they are proved to be false, I/we shall bear and pay according to the prevailing law.

Petitioner,

Authorized person's signature-

Name of bank and financial institution-

Address-

If there be more than one petitioner, number 1, 2,3 has to be given and full name, surname and address of the all mentioned and literate have to sign and other to put thumb impressions over there.

Done on _____day, the _____day of the month of _____of the year _____

Note: Contents of the petition have to be mentioned in paragraphs with serial numbers; and the last two paragraphs should not be given number, and the first should, to the extent possible, indicate the Act, law under which the claim is made and the claim, and the second should indicate the facts, as shown in the above format.

Schedule-2
(Relating to Rule 8)

Summons issued by tribunal-----

As ----- bank/financial institution, situated at Ward No.-----,-----
Municipality/VDC,----- District filed in this tribunal a petition on — case against
you on -----, you are hereby summoned to make presence in person or send an
attorney or legal practitioner pursuant to law to file a note of defense on the day on which
this tribunal remains open within fifteen days excluding the time required for journey. If you
fail to appear in person or do not send even your attorney or legal practitioner to file a note
of defense within that time limit, the case shall be decided in accordance with the Act.
None of your subsequent complaints shall be entertained.

Done on ----- day, the ----- day of the month of ----- of the year -----

Schedule - 3
(Relating to Rule 17)

Tribunal -----	Defendant's name, surname an address
(1) Chairman Mr.-----	-----
(2) Member Mr. -----	-----
(3) Member Mr.-----	-----

Decision	Witness of Petitioner
Petition registration No.----of the year ---	-----
Case-	Document
Petitioner's name, surname an address	-----

Witness of Petitioner

Document

Evidence examined by tribunal

Witness-----

Document-----

Short facts of case-

Verdict-

Upon studying all documents of this case, the petitioner appears to claim so and so, the defendant appears to contend so and so or so and so and so and so has happened; and because of so and so evidence and so and so law, it is held to have so and so or as it appears so and so, it is held to have so and so, we have handed down this decision.

Done on ——day, the ——day of the month of ——of the year ——.

- (1) Let it be done so because of the verdict
- (2) Let appeal be made within the time limit

Note :

- (1) Any one member out of the deciding members has to write down or cause to be written down, on his own. After the member who has so written down or caused to be written down or typed the decision has signed the decision so prepared, the member who concurs the decision has also to sign it.
- (2) If, in making decision, the members have a single opinion or details are different despite divergence of opinion, a single decision has to be written down or caused to be written down by those who have convergence of opinion and separate decision by those who have divergence of opinion.
- (3) One who has written down decision as dictated by the chairman or the member, has to write down on the left hand side at the end of decision that one has written down or typed it as dictated by the chairman or member Mr.—— and sign there.

Schedule-4
(Relating to Rule 17)

Tribunal_____

Order sheet

Petition registration No.—of the year —

_____Petitioner

and

_____Defendant

Order

Member of tribunal

Date-

Signature-

Schedule-5
(Relating to Rule 21)

Memorandum of appeal filed in appellate tribunal _____

Appeal registration No.- or the year _____

So/so (full name, surname and address of each) _____

Petitioner/Defendant Appellant

Vs.

So/so (full name, surname and address of each) _____

Petitioner/Defendant

Respondent

As we are not satisfied with the decision handed down in the case of _____ by the _____ tribunal on _____ requiring me/us to do so and so, I/we have made this appeal, attaching herewith a proof of payment made for the amount in controversy in the case or fine and punishment of such and such or while in detention. If the judgment made by the authority subsequently is found reasonable, I/we shall bear and pay according to the Act for making appeal. I/we, the appellant, have the following appeal claim in this matter.

1. _____

2. _____

Appellant,

So and so residing in so and so place.

(If there be more than one appellant, number 1, 2, 3 has to be given and full name, surname and address of the all mentioned and literate ones have to sign and other to put thumb impressions over there).

Done on _____ day, the _____ day of the month of _____ of the year _____

Note: This is a general format of memorandum of appeal. Memorandum of appeal of any case has to be written in this format mutatis mutandis so as to fulfill the requirements under this Regulation.

Schedule - 6
(Relating to Rule 25)

Summons issued by appellate tribunal————

As ———bank/financial institution, situated at Ward No.——, —Municipality/
VDC,—District, filed in this tribunal a petition on—case against you on ———, you are
hereby summoned to make presence in person or send an attorney or legal practitioner
pursuant to law to file a note of defense on the day on which this appellate tribunal remains
open within fifteen days excluding the time required for journey. If you fail to appear in
person or do not send even your attorney or legal practitioner to file a note of defense
within that time limit, the case shall be decided in accordance with the Act. None of your
subsequent complaints shall be entertained.

Done on ——day, the ——day of the month of ——of the year ——

Schedule - 7
(Relating to Rule 43)

Oath

I—— do solemnly swear in the name of God that I shall discharge the functions
assigned to me as—— and those to be discharged by me pursuant to law honestly and
to the best of my knowledge and wisdom, being loyal to the country and duty, without fear,
partiality or enmity and being free from greed, avarice and favor. I shall not disclose any
matter related with debt recovery known to me in the course of discharging my duties to
any unauthorized person directly or indirectly in any case whether I hold or cease to hold
office, except in cases where such disclosure is required by law.

Signature————

Name——

Address—

Date——

Person certifying that it is true that oath has been taken-

Signature————

Name——

Designation—

Date——