

Foreign Employment Act, 2064 (2007)

Date of Authentication and Publication

2064-05-19 (September 5, 2007)

Act number 18 of the year 2064 (2007)

An Act Made to Amend and Consolidate Laws Relating to Foreign Employment

Preamble: Whereas, it is expedient to amend and consolidate laws relating to foreign employment in order to make foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business;

Now, therefore, be it enacted by the Legislature-Parliament.

Chapter-1

Preliminary

1. **Short title, extension and commencement:** (1) This Act may be called "Foreign Employment Act, 2064 (2007)".

(2) It shall extend throughout Nepal and also apply to one who stays outside Nepal and commits any act contrary to this Act.

(3) This Act shall into force immediately.

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

(a) "Foreign employment" means employment which a worker gets abroad.

(b) "Worker" means a citizen of Nepal who gets in foreign employment.

- (c) "Foreign employment business" means a business carried on to provide employment to citizen of Nepal in abroad.
- (d) "Department" means the Department of Foreign Employment.
- (e) "Institution" means an institution established under the prevailing Companies Act to carry on the foreign employment business.
- (f) "License" means a license granted under Section 11 to carry on the foreign employment business.
- (g) "Licensee" means an institution having obtained license pursuant to Section 11.
- (h) "Service charge" means a sum of money charged by a foreign employment entrepreneur for sending a worker abroad.
- (i) "Executive Director" means the Executive Director as referred to in Section 41.
- (j) "Employer institution" means an abroad based institution providing a worker with employment in abroad.
- (k) "Board" means the Foreign Employment Promotion Board constituted pursuant to Section 38.
- (l) "Labor Attaché" means the labor attaché appointed pursuant to Section 68, and this term also includes an officer employee, in an abroad-based diplomatic mission, entrusted with the responsibility for the promotion of the interests of Nepalese workers.
- (m) "Prescribed" or "As prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter-2

Provisions Relating Foreign Employment

3. Specification of countries for carrying on foreign employment business:(1)

The Government of Nepal shall, by a notification in the Nepal Gazette, specify countries for carrying on the foreign employment business.

(2) Out of the countries specified pursuant to Sub-section (1), the Government of Nepal may prohibit the carrying on of the foreign employment business in any country and suspend such business for a certain period.

4. Power to make bilateral agreement: The Government of Nepal may make a bilateral labor agreement with a foreign country where the citizens of Nepal have gone or may go for foreign employment.

5. Selection of institution: (1) If any foreign country or employer institution makes a request to the Government of Nepal to select and send workers, the Government of Nepal may select any licensee institution through open competition and send workers through such institution.

(2) The Department shall demand additional cash deposit or bank guarantee from the institution selected pursuant to Sub-section (1).

(3) The grounds and procedures for the selection of institution pursuant to Sub-section (1) shall be as prescribed.

6. Power to send workers by making a treaty or an agreement: (1)

Notwithstanding anything contained elsewhere in this Act, the Government of Nepal may make a treaty or an agreement with the government of a country having diplomatic relations with Nepal and send workers to such country through any office, institution of the Government of Nepal or any institution fully owned by the Government of Nepal.

(2) There shall be a steering committee as follows for formulating policies and making other arrangements required to make systematic, competitive and transparent the procedures to be followed while sending workers by the Government of Nepal pursuant to Sub-section (1):-

- (a) Minister or Minister of State for Labor and Transport Management -Chairperson
- (b) Secretary, Ministry of Labor and Transport Management -Member
- (c) Representative (Joint Secretary level), Ministry of Finance -Member
- (d) Representative (Joint Secretary level), Ministry of Industries, Commerce and Supplies -Member
- (e) Representative (Joint Secretary level), Ministry of Home Affairs -Member
- (f) Representative (Joint Secretary level), Ministry of Foreign Affairs -Member
- (g) Executive Director -Member
- (h) Woman representative, National Women Commission -Member
- (i) One representative from each recognized trade union federation -Member
- (j) One representative of foreign entrepreneurs' associations -Member
- (k) Director General, Department -Member

Secretary

(3) The steering committee referred to in Sub-section (2) may, as required, invite any native or foreign expert in the field of foreign employment as an observer to its meeting.

(4) The steering committee referred to in Sub-section (2) shall manage its procedures on its own.

(5) The selection of persons required as workers to be sent pursuant to this Section shall be made from amongst the persons who have fulfilled the prescribed standards and procedures on the basis of impartiality and transparency.

(6) It shall be the obligation of the Government of Nepal to solve a problem, if any, arising for any worker going on foreign employment pursuant to this Section.

7. **Prohibition on sending a minor for employment:** Any minor who has not completed eighteen years of age shall not be sent for foreign employment.

8. **Prohibition on gender discrimination:**No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act.

Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand.

9. **To provide special facility and reservation:**(1) The Government of Nepal may provide special facility to the women, Dalit, indigenous nationalities, oppressed, victims of natural calamities and people of remote areas who go for foreign employment.

(2) In sending workers for foreign employment, any institution shall provide reservation to the women, Dalit, indigenous nationalities, oppressed class, backward area and class and people of remote areas in the number as prescribed by the Government of Nepal.

Chapter-3

Provisions Relating to License

10. Prohibition on carrying on foreign employment business without license:

No one shall carry on the foreign employment business without obtaining a license pursuant to this Act.

11. Provisions relating to license: (1) An institution intending to carry on the foreign employment business shall make an application to the Department for the license setting out the details as prescribed.

(2) If, upon making necessary inquiry into an application made pursuant to Sub-section (1), it appears appropriate to grant the license to such institution to carry on the foreign employment business, the Department shall grant the license, upon collecting the license fees as prescribed and a sum of three million rupees in cash or seven hundred thousand rupees in cash and a bank guarantee of the remaining two million three hundred thousand rupees as a deposit.

Explanation: For the purposes of this Act, the term "bank guarantee" means a bank guarantee so issued by the bank specified by the Department that cash payment is made by the bank as and when so demanded by the Department.

(3) The institutions having obtained license prior to the commencement of this Act shall make deposit as referred to in Sub-section (2) within one year from the date of commencement of this Act.

(4) If, after the license has been obtained by furnishing the deposit pursuant to Sub-section (2), the deposit appears to be insufficient in proportion to the transactions of the licensee, the Department shall issue an order to furnish additional deposit, as required.

(5) The Department may accept a bank guarantee for the additional deposit to be furnished pursuant to Sub-section (4).

(6) If, on inquiring into the application pursuant to Sub-section (2), it appears that the license cannot be granted, the Department shall give information thereof, accompanied by the reason, to the applicant within seven days of the decision not to grant the license.

(7) The applicant who is not satisfied with the decision made by the Department pursuant to Sub-section (6) may make an appeal to the Government of Nepal within thirty-five days after the date of receipt of such information and a decision made by the Government in relation to the appeal shall be final.

12. Period and renewal of license: (1) Except where the license is canceled pursuant to Section 13, the license shall remain valid for up to one financial year. The period of such license shall expire at the end of that financial year despite the fact that the license has been issued on any date whatsoever.

(2) A licensee who intends to get the license renewed may get the license renewed by furnishing the details and fees as prescribed within the prescribed time in each financial year.

(3) Notwithstanding anything contained in Sub-section (1) or (2), any licensee may get the license renewed for three financial years by paying the renewal fees for three financial years at the same time.

13. Revocation of license: (1) If a licensee fails to get renewed within the period referred to in Section 12, such license shall be revoked.

(2) If a licensee does any of the following acts, the Department may revoke the license obtained by the licensee:-

- (a) Obtaining the license by submitting fake documents or details,
- (b) Failing to furnish cash deposit within the period referred to in Sub-section (3) of Section 11,
- (c) Failing to furnish additional deposit pursuant to the order issued under Sub-section (4) of Section 11,
- (d) Failing to reimburse the deposit pursuant to Sub-section (3) of Section 35,
- (e) Doing any act contrary to this Act or the rules framed under this Act.

(3) Prior to revoking the license pursuant to Sub-section (2), the Department shall provide the concerned licensee with an opportunity for defense.

(4) The licensee, who is not satisfied with the decision made to revoke the license pursuant to this Section, may make an appeal to the Government of Nepal within thirty-five days of the date of receipt of information of the decision to revoke the license the decision made by the Government of Nepal in relation to the appeal shall be final.

14. Prohibition on transfer of or change in ownership or liability:

Notwithstanding anything contained in the prevailing laws, no licensee shall, without approval of the Department, transfer or change the ownership or liability of the institution.

Chapter-4

Provisions Relating to Prior Approval and Selection of Workers

15. **Prior approval to be obtained:** (1) A licensee shall make an application setting out the following details, based on the agreement or understanding made with an employer institution, to the Department for prior approval to send workers for foreign employment:-

- (a) Name and address of the employer institution and country where workers are to be sent,
- (b) Type of foreign employment,
- (c) Type and number of workers,
- (d) Salary, facilities and leave to be obtained by workers,
- (e) working days and time to be done by the works .
- (f) Original copy of the demand letter and authority certified by the authentic body or diplomatic mission or labor attaché or chamber of commerce or notary public of the country where workers go for foreign employment,
- (g) A copy of the contract to be made between the employer institution and workers,
- (h) A copy of the contract to be made between the licensee and workers,
- (i) Other matters as prescribed.

(2) If, on inquiring into the application made pursuant to Sub-section (1), the demand of the licensee appears appropriate, the Department shall, no later than four days after the date of application, give prior approval to start action to send Nepalese workers for foreign employment.

(3) Notwithstanding anything contained in Sub-section (2), the Department shall not give prior approval to select workers under any of the following conditions:-

- (a) The terms and conditions of service and facilities are not satisfactory in proportion to the qualification of the worker demanded by the employer institution,
- (b) The proposed foreign employment seems to be of such nature as to have adverse effect on the dignity, prestige or health of workers,
- (c) It appears inappropriate from security perspective,
- (d) There exist other conditions as prescribed.

(4) If a decision is made not to give prior approval pursuant to Sub-section (3), information thereof, accompanied by the reason for the same, shall be given to the applicant.

16. Publication of advertisement: (1) On receipt of approval pursuant to Section 15, the licensee shall publish an advertisement in a daily newspaper of national circulation to be published in the Nepali language, setting out the details as prescribed and giving the time-limit of at least seven days, for the selection of the workers.

(2) The concerned licensee shall post a notice of advertisement published pursuant to Sub-section (1) on the notice-board of its office and submit a copy of that notice to the Department on the same day.

(3) After the publication of advertisement pursuant to Sub-section (1), a person who intends to go for foreign employment shall make an application, accompanied by the prescribed details, to the licensee.

17. List to be prepared after selecting workers: (1) Upon receipt of an application pursuant to Sub-section (3) of Section 15, the licensee shall select workers on the grounds of qualification and experience of applicants and other matters as prescribed, according to the nature of work demanded . The licensee shall prepare a list of selected persons, post such list on the notice board of the office of the licensee and submit a copy thereof to the Department.

(2) If a complaint is made by any person or the Department itself receives an information in any manner that any irregularity has been made in the preparation of workers list pursuant to Sub-section (1), the Department may immediately make necessary inquiry thereinto; and if, in making such inquiry, it appears that any irregularity has been made as mentioned in the complaint or petition, the Department shall give order to immediately stop all acts relating to the selection of workers.

18. Approval required to take passports to the abroad: If a licensee has to take passports of those persons who have been selected for foreign employment pursuant to Section 17 outside Nepal for visas, approval of the Department has to be obtained.

19. Provisions relating to labor permission sticker: (1) After receiving visas of workers selected pursuant to Section 17 and before sending such workers for foreign employment, the licensee shall make a submission, accompanied by the following details, to the Department for labor permission sticker:-

- (a) In the event that skill-oriented training is required for any work, a certificate of such training and a certificate of orientation training,
- (b) Health certificate,
- (c) Insurance certificate,
- (d) Contract made between the licensee and the worker,

- (e) Contract made between the employer institution and the worker,
- (f) A receipt or bank voucher of amount paid by the worker to the licensee,
- (g) Other matters as prescribed.

(2) If, in examining the details submitted pursuant to Sub-section (1), the details are found to be in conformity with the details submitted pursuant to Section 15, the Department shall affix the labor permission sticker on the passport of such worker.

(3) If the information provided pursuant to Sub-section (1) is found to be inconsistent with the details submitted pursuant to Section 15, the Department may prevent the licensee from sending workers for foreign employment, and the information, accompanied by the reason for such prevention, shall be given to the licensee.

20. To send for foreign employment: (1) upon giving information pursuant to Section 19, the licensee shall send the concerned worker for foreign employment within the specified period to enter into the concerned country, if any, and within three months if such period is not specified.

(2) In the event of failure to send a worker for foreign employment within the time-limit as referred to in Sub-section (1), the concerned licensee shall return the amount received from the concerned worker, as well as an interest on that amount at the rate of twenty percent per annum, to the concerned worker within thirty days.

(3) If, after having obtained a visa, any worker refuses or is not able to go for foreign employment, the licensee shall, in returning the amount to the worker, return the remaining amount to be set after deducting the visa fee only.

Provided that if the worker refuses to go by the reason of any terms different than those advertised by obtaining prior approval, the visa fee shall not be deducted.

21. To go for foreign employment on personal basis: (1) If any person intends to go abroad for foreign employment on personal basis, such person shall make an application, setting out the following matters, to the Department for approval:-

- (a) Country intended to be visited for employment,
- (b) Nature of work to be done abroad,
- (c) Letter of approval granted by the employer institution,
- (d) Agreement clearly mentioning the terms and facilities of employment,
- (e) Certificate showing that orientation training has been taken,
- (f) Health certificate.

(2) If, in making necessary inquiry on receipt of the application referred to in Sub-section (1), the request of the applicant appears to be appropriate, the Department shall give permission to the applicant to go abroad for employment, and in so giving permission, the Department shall require the applicant to submit an insurance certificate.

(3) Notwithstanding anything contained in this Section, no licensee shall send workers on personal basis.

22. Native airport to be used: (1) While sending workers for foreign employment, the licensee shall so send them that they use native airport.

(2) Where workers have to be sent by using any foreign airport showing reasons such as non-availability of air tickets for sending workers by

using the native airport pursuant to Sub-section (1), approval of the Department has to be obtained.

(3) While going outside Nepal to use the foreign airport by obtaining approval of the Department pursuant to Sub-section (2), registration, as prescribed, has to be made with the immigration office of the departure point.

23. Power to specify minimum remuneration: The Government of Nepal may, by a notification in the Nepal Gazette, specify the minimum remuneration to be received by workers who go for foreign employment.

24. Service charge and promotional costs: (1) The Government of Nepal may, in relation to any specific country or company, specify the upper limit of amount, including the service fee and promotional costs that the institution can collect from each worker.

(2) After the licensee has given information that visa has been received from the concerned country for a worker selected for foreign employment, the worker shall deposit the amount as referred to in the contract with the office or in the bank account of the licensee.

(3) In the event that amount is deposited with the office of the licensee pursuant to Sub-section (2), a receipt thereof shall be given to the worker.

Explanation: For the purposes of this Section, "promotional costs" means the visa fee chargeable for sending a worker for employment and miscellaneous expenses made within and outside the country, in the course of receiving the quota of workers.

25. Foreign employment contract to be made: (1) Prior to the departure of a worker for foreign employment, a contract shall be made between the employer institution or its agent and the worker and the licensee and the worker on the

terms and conditions of employment, terms and conditions to be observed by both parties and remuneration to be received by the worker, after getting the worker to clearly understand such terms and conditions and provisions of remuneration.

(2) The licensee shall translate the contract referred to in Sub-section (1) into the Nepali language and submit two copies thereof to the Department and the Department shall certify copies of such contract, retain one copy thereof in the Department and provide the other copy to the worker.

26. Insurance to be procured: (1) The licensee shall, prior to sending a worker for foreign employment, procure insurance of at least five hundred thousand rupees with validity for the term of contract so that such worker can claim damages for death or mutilation, if such worker who has gone for foreign employment pursuant to this Act dies from any cause at any time or gets mutilated.

(2) Even a person who goes for foreign employment personally pursuant to Section 21 shall, prior to going for foreign employment, shall make insurance equivalent to the amount set forth in Sub-section (1).

(3) Other provisions relating to insurance shall be as prescribed.

Chapter-5

Provisions Relating to Classification of Training and Workers

27. Training to be taken: Any worker who goes for foreign employment shall, prior to going for foreign employment, take orientation training, as prescribed, from the institution having obtained permission from the Department pursuant to Section 28.

28. Provisions relating to institution running orientation training:(1) An institution intending to provide orientation training to workers who go for

foreign employment shall make an application to the Department for permission to run such orientation training.

(2) The Department shall submit the application received pursuant to Sub-section (1) to the Board.

(3) If, in making necessary inquiry into the application received pursuant to Sub-section (2), the infrastructures, human resources as well as other means and resources of the institution providing the orientation training appear adequate, the Board shall write to the Department to provide license to the applicant to run the orientation training to be given to workers who go for foreign employment.

(4) If so written to provide the license pursuant to Sub-section (3), the Department shall provide the applicant with the license to run the orientation training by collecting the deposit and license fees, as prescribed.

(5) If any institution which is running the training after having obtained permission at the time of commencement of this Act meets the criteria and terms as referred to in this Section, the Department shall make renewal.

(6) Provisions relating to the renewal of license provided to any institution to run the orientation training pursuant to this Section and the renewal fees shall be as prescribed.

29. Fixation of curriculum and standard of orientation training: The Board shall determine the curriculum and standard of the orientation training to be provided by the institution running the orientation training which has obtained license pursuant to Section 28.

30. Skill-oriented training to be taken: A worker going for foreign employment to do any work requiring any skill-oriented training shall obtain such training from an institution recognized by the Government of Nepal.

Explanation: For the purposes of this Section, "institution recognized by the Government of Nepal" means the Council for Technical Education and Vocational Training and any other institution which has been established under the prevailing law to provide similar training and affiliated with that Council.

31. **Classification of workers:** The Government of Nepal may, by a notification in the Nepal Gazette, specify the provisions relating to the classification of workers who go for foreign employment and the skill-oriented training to be taken according to the classification.

Chapter-6

Provisions Relating to Foreign Employment Welfare Fund

32. **Establishment of foreign employment welfare fund:** (1) A foreign employment welfare fund shall be established under the Board for the social security and welfare of the workers who have gone for foreign employment and returned from foreign employment and their families.

(2) The following amounts shall be credited to the fund referred to in Sub-section (1):-

- (a) Amounts deposited as prescribed by the workers prior to going for foreign employment,
- (b) Interest amount earned by mobilizing, as prescribed, the deposits furnished pursuant to Sub-section (2) of Section 11,
- (c) Amount received by way of license fees and license renewal fees,
- (d) Fees for license to be provided to the institutions running training pursuant to Section 28 and the license renewal fees,
- (e) Amounts received by the fund from time to time from the institutions related with the foreign employment business,

- (f) Grants and assistance received from any native or foreign persons or bodies.

(3) Prior to receiving assistance from any foreign person or body pursuant to clause (f) of Sub-section (2), approval of the Government of Nepal shall be obtained.

Explanation: For the purposes of this Act, the term "family" means the husband or wife, son, daughter or mother, father and her father-in-law and mother-in-law, in the case of a female worker, whom the worker who has gone for foreign employment and returned from foreign employment has to maintain and subsist on his or her own.

33. Use and operation of foreign employment welfare fund: (1) The foreign employment welfare fund shall be used for the following purposes:-

- (a) Providing skill-oriented training to the workers going for foreign employment,
- (b) Repatriating workers to Nepal due to mutilation or reason referred to in Sub-section (1) of Section 75, providing compensation to workers and providing financial assistance to the workers who have so come back or their families,
- (c) Launching employment-oriented programs for the workers who have come back from foreign employment,
- (d) Where a worker who has gone abroad for foreign employment dies there and his or her dead body is not attended by any one, bringing the dead body to Nepal and providing financial assistance to his or her family,
- (e) Carrying out acts relating to foreign employment promotion,
- (f) Carrying out other acts as prescribed.

(2) Other provisions relating to the operation of the foreign employment welfare fund shall be as prescribed.

Chapter-7

Provisions Relating to Monitoring and Inquiry

34. Monitoring: (1) The Department shall monitor and inspect, from time to time, the office of the licensee in relation to whether this Act or the rules framed under this Act or direction given under this Act have been observed or not and for this purpose, it may inspect the records and other relevant documents maintained by the licensee.

(2) It shall be the duty of the licensee to provide such details and records as demanded at the time of making monitoring or inspection pursuant to Sub-section (1).

35. Inquiry: (1) In cases where a complaint is made by a worker that the employer institution has not fulfilled the contractual obligation or the licensee has not taken necessary and appropriate action to get fulfilled the terms and conditions set forth in the contract, the Department may make, or cause to be made, necessary inquiry thereinto.

(2) If, upon an inquiry made pursuant to Sub-section (1), it appears necessary to bring the concerned worker back to Nepal, the Department shall order the licensee to provide such amount as is needed to bring the worker back to Nepal.

(3) In the event of failure to provide such amount in pursuance of the order issued by the Department pursuant to Sub-section (2), such worker shall be brought back to Nepal by spending the deposit furnished by the licensee pursuant to Section 11. Where the deposit is so spent, a notice shall be given to the concerned licensee to reimburse the amount as soon as possible, and the

licensee shall reimburse that amount into the deposit no later than fifteen days of the receipt of such notice.

(4) If the expenses required to bring the worker back to Nepal cannot be met from the deposit furnished pursuant to Section 11, the licensee shall pay such shortfall amount within the time-limit specified by the Department and in the event of failure to make payment within such time-limit, the amount shall be realized as if it were a governmental due.

36. Complaint for compensation:

(1) If any employer institution does not provide employment in accordance with the terms prescribed in the agreement, the worker or his or her agent may make a complaint, along with evidence, with the Department for compensation.

(2) If, in making necessary inquiry into the complaint made pursuant to Sub-section (1), the contents seem to be reasonable, the Department may give an order to the licensee to provide compensation for all expenses incurred in going for foreign employment.

37. Power to give direction: (1) The Government of Nepal may, from time to time, give necessary direction to any licensee in relation to foreign employment.

(2) It shall be the duty of the concerned licensee to observe the direction given pursuant to Sub-section (1).

Chapter-8

Constitution, Functions, Duties and Powers of Board

38. Formation of Board: (1) A Foreign Employment Promotion Board shall be constituted as follows, also for the purpose of carrying out acts required to promote the foreign employment business and make this business safe,

systematic and decent and protect the rights and interests of workers going for foreign employment and the foreign employment entrepreneurs.

- (a) Minister/Minister of State for Labor and Transport Management Ministry of Agriculture and Cooperatives -Chairperson
- (b) Minister of State/Assistant Minister for Labor and Transport Management -Vice-chairperson
- (c) Member, National Planning (responsible for the concerned sector) -Member
- (d) Secretary, Ministry of Labor and Transport Management -Member
- (e) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Home Affairs -Member
- (f) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Foreign Affairs -Member
- (g) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Finance -Member
- (h) Secretary or Gazetted First Class level representative designated by him or her, Ministry of Law, Justice and Parliamentary Affairs -Member
- (i) Secretary or Gazetted First Class level representative designated by him or her,

- Ministry of Women, Children and Social Welfare -Member
- (j) Director General, Department -Member
- (k) Representative (equivalent to First Class, Nepal Rastra Bank -Member
- (l) Two persons including one woman nominated by the Government from amongst foreign employment experts -Member
- (m) Two persons consisting of the chairperson of the foreign employment entrepreneurs' association and one woman representative nominated by that association -Member
- (n) Two persons consisting of one woman nominated by the Government of Nepal from amongst the operators of skill-oriented and orientation trainings on foreign employment -Member
- (o) One person nominated by the Government of Nepal from amongst the doctors, who have passed at least MBBS, of a health institute recognized pursuant to Section 72 -Member
- (p) Chairpersons of four recognized trade union federations designated by the Government of Nepal or four persons consisting of one nominated by each such federation -Member
- (q) Representative, Federation of Nepal Chamber -Member

of Commerce and Industry

- (r) Representative, Council for Technical Education and Vocational Training -Member
- (s) Executive Director -Member
Secretary

(2) Tenure of office the members nominated by the Government of Nepal pursuant to Sub-section (1) shall be of two years.

39. Functions, duties and powers of the Board: The functions, duties and powers of the Board, in addition to its functions, duties and powers set forth elsewhere in this Act, shall be as follows:-

- (a) To do, or cause to be done, studies of international labor market and explore, or cause to be explored, new international labor market,
- (b) To collect, process and publish information for the promotion of foreign employment,
- (c) To mobilize, or cause to be mobilized, the Foreign Employment Welfare Fund,
- (d) To do, or cause to be done, acts required for the protection of interests of the workers who have gone for foreign employment,
- (e) To formulate, implement, monitor and evaluate programs to utilize the skills, capital of, and technology learnt by, the workers who have come back from abroad and use the same for the national interests,
- (f) To do necessary acts in relation to labor agreements to be entered into with various countries,
- (g) To prescribe qualifications for the registration of institutions providing foreign employment orientation trainings,

- (h) To formulate and approve curricula of foreign employment orientation trainings,
- (i) To formulate such short-term and long-term policies as required to be pursued to make the foreign employment business safe, systematic and decent and in relation to the protection of the rights and interests of the foreign employment entrepreneurs and submit such policies to the Government of Nepal,
- (j) To carry out a comprehensive study on the implementation of the Foreign Employment Act and give suggestions to the Government of Nepal,
- (k) If it appears necessary to review the laws relating to foreign employment, to review the same and give suggestions to the Government for necessary improvements,
- (l) To give advice to the Government of Nepal in relation to the fixation of the service charges and promotional costs,
- (m) To give advice to the Government of Nepal to make necessary arrangements on importing earnings made by Nepalese workers abroad into Nepal in a simple and easy manner,
- (n) If it is found that any person has done or taken any act or action contrary to the laws relating to foreign employment, to write to the concerned body for necessary action,
- (o) To monitor the institutions licensed to operate the foreign employment business,
- (p) To monitor, or cause to be monitored, the institutions having obtained license or permission to provide orientation trainings and skill-oriented trainings,

- (q) If, in carrying out or causing to be carried out monitoring, it is found that any person has done any act in contrary to this Act or the rules framed under this Act, to write to the concerned body for necessary action,
- (r) To submit to the Government of Nepal an annual report of the activities carried out by it,
- (s) To do, or cause to be done, other acts as prescribed.

40. Meetings and decisions of the Board: (1) Meeting of the Board shall be held as required.

(2) The meeting of the Board shall be held at such place, time and date as may be specified by the chairperson.

(3) The presence of more than fifty percent out of the total number of members of the Board shall be deemed to constitute a quorum for a meeting of the Board.

(4) The meeting of the Board shall be presided over by the chairperson of the Board, by the vice-chairperson in the absence of the chairperson, and by the member selected by the members present at the meeting from amongst themselves, in the absence of even the vice-chairperson.

(5) A majority opinion shall prevail at the meeting of the Board. In the event of a tie, the person presiding over the meeting shall exercise the casting vote.

(6) The decisions of the Board shall be authenticated by the member-secretary.

(7) The Board may invite any relevant expert or office-bearer as an observer at its meeting.

(8) Other procedures relating to the meeting of the Board shall be as determined by the Board itself.

(9) The chairperson and member of the Board shall, for having participated in the meeting of the Board, receive such meeting allowance as prescribed by the Government of Nepal.

41. Appointment, functions, duties and powers of Executive Director:

(1) The Government of Nepal shall appoint one Executive Director through open competition, as prescribed, from amongst the persons who have possessed the prescribed qualification and are not involved in the foreign employment business, to carry out day-to-day business of the Board, as its administrative chief.

(2) Notwithstanding anything contained in Sub-section (1), until the office of the Executive Director is filled up, the Government of Nepal may designate any officer employee of at least Gazetted First Class to act as the Executive Director for a maximum period of three months.

(3) The tenure of office of the Executive Director shall be of four years.

(4) The provisions relating to the remuneration, terms of service and facilities of the Executive Director shall be as prescribed.

(5) The functions, duties and powers of the Executive Director shall be as follows:-

- (a) To implement, or cause to be implemented, the decisions of the Board,
- (b) To perform such other functions as prescribed.

42. **Secretariat of the Board:**(1)The Board shall have a separate secretariat of its own.

(2) The Executive Director shall be the chief of the secretariat.

(3) The Government of Nepal shall provide necessary employees for the secretariat of the Board.

Chapter-9

Offense and Punishment

43. **Punishment to be imposed in the event of carrying on foreign employment business without license:** If any person carries on the foreign employment business in contrary to Section 10 or collects any amount with intent to engage a person in foreign employment or sends a person abroad by giving false assurance or lures a person to be engaged in foreign employment, the amount so received and an amount to be set by fifty percent of that amount shall be recovered from that person as compensation and the expenses incurred by that other person in going to and coming from abroad shall also be realized and that person shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years. In the event that such person has not yet sent that person abroad, half the punishment shall be imposed.

44. **Punishment to be imposed in the event of sending workers by licensee without obtaining permission:** If any licensee sends any worker abroad without obtaining permission from the Department or collects any amount by giving false assurance or showing enticement that the licensee would engage any person in foreign employment but does not send that person abroad, the amount so collected and an amount to be set by fifty percent of that amount shall be recovered from that licensee, and such licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and

with imprisonment for a term of three years to seven years; and the license of such licensee shall also be revoked.

45. Punishment to be imposed in the event of sending minors for foreign

employment: If any licensee sends any minor for foreign employment in contravention of Section 7, the licensee shall be punished with a fine of three hundred thousand rupees to five hundred thousand rupees and with imprisonment for a term of three years to seven years.

46. Punishment to be imposed in the event of sending workers to countries not

opened by Government: If any licensee sends any worker to any country which has not been opened by the Government of Nepal for foreign employment or obtains a visa from any country which has been opened but sends any worker to a country which has not been opened, the licensee so sending a worker shall be punished with a fine of three hundred thousand rupees to seven hundred thousand rupees and with imprisonment for a term of three years to five years. In case the licensee has collected any amount for sending the worker but has not yet sent the worker, the licensee shall be subject to half the punishment.

47. Punishment to be imposed in the event of concealing or altering document

or report:(1) If any licensee knowingly conceals any document or report required to be maintained under this Act or the Rules framed under this Act or alters any matter therein or makes any false contents or causes any one to prepare false details, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees and with imprisonment for a term of six months to one year.

(2) If any licensee who has been punished pursuant to Sub-section (1) is held to have repeated the offense, such licensee shall be subject to two-fold punishment, and the license obtained by such licensee shall be revoked.

48. **Punishment to be imposed in the event of opening branch office without permission:** If any licensee opens a branch office without obtaining permission of the Department, the Department may issue an order to punish the licensee with a fine at the rate of two hundred thousand rupees for each branch and close that office.
49. **Punishment to be imposed in the event of failure to publish advertisement:**
- (1) If any licensee fails to publish an advertisement pursuant to Section 16 or publishes an advertisement without obtaining permission of the Department, the Department shall punish such licensee with a fine of fifty thousand rupees and cancel such an advertisement.
- (2) If any licensee fails to set out such details in an advertisement as required to be set out as per the permission received pursuant to Section 15, the Department shall cause that licensee to correct and republish the advertisement.
50. **Punishment to be imposed in the event of failure to publish selection list:**
- If any licensee fails to publish a selection list of workers pursuant to Section 17 or publishes it but fails to give information thereof to the Department, the Department may punish such licensee with a fine of fifty thousand rupees and order to republish the selection list.
51. **Punishment to be imposed in the event of refusal to return amount or provide compensation:**(1) If any licensee fails to return the amount set forth in Sub-section (2) of Section 20 within the time set forth in that sub-section or refuses to provide compensation referred to in Sub-section (2) of Section 36, the Department may get such amount or compensation returned or provided to the concerned worker from the cash deposit made by that licensee pursuant to Section 11, punish such licensee with a fine of one hundred thousand rupees and revoke the license.

(2) If the amount or compensation is to be returned or provided pursuant to Sub-section (1) and the cash deposit made by the licensee pursuant to Section 11 is not sufficient to cover such amount or compensation, the Department shall give a time-limit of sixty days to the licensee to pay the shortfall amount and if the licensee fails to pay the amount within that time-limit, the amount shall be realized from the assets of the licensee.

52. **Punishment to be imposed in the event of sending worker by licensee on personal basis:** If any licensee sends any worker on personal basis in contravention of Sub-section (3) of Section 21, such licensee shall be punished with a fine of one hundred thousand rupees to three hundred thousand rupees or with revocations of license or with both punishments.
53. **Punishment to be imposed in the event of collecting visa fees, service charges and promotional costs in excess:** If any licensee collects visa fees where free visa has been received or collects fees or costs in excess of the fees or costs as prescribed, the Department shall require the licensee to return such fees not to be charged or such excess fees or costs to the concerned person and punish such licensee with a fine of one hundred thousand rupees.
54. **Punishment to be imposed in the event of failure to observe order or direction:** Except as otherwise provided for in this Chapter, the Department may warn for the first instance any licensee who fails to observe this Act and the rules, orders or directions framed or issued under this Act, punish such licensee with a fine of fifty thousand rupees for the second instance and with a fine of one hundred thousand rupees, along with revocation of license, for the third instance of the same offense.
55. **Punishment to be imposed in the event of doing or causing to be done act contrary to contract:** If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration or facilities lower than that or in another company for a work of such nature as is

different than that specified in the contract or does not engage the worker in the work for which the worker has been sent for foreign employment but engages the worker in another work or engages the worker in work for remuneration and facilities less than the remuneration and facilities offered previously, the Department shall punish such licensee with a fine of one hundred thousand rupees and require the licensee to pay the shortfall amount of such remuneration and facilities.

- 56. Punishment to be imposed on accomplice:** A person who is an accomplice in any offense referred to in this Act or aids and abets the commission of such offense shall be subject to half the punishment to be imposed in the case of that offense.
- 57. Punishment to person who acts as chief:** If any firm, company, institution or licensee commits any offense punishable under this Chapter and the office-bearer or employee who has committed such offense is identified, then such office-bearer or employee shall, and if such office-bearer or employee cannot be identified, the person who has acted as the chief of such firm, company or institution at the time of commission of the offense shall, be subject to punishment.
- 58. No license be re-issued:** After the license of any licensee has been revoked pursuant to this Chapter, no license shall be re-issued to the same institution and operator.
- 59. Opportunity for defense:** Prior to revoking the license pursuant to this Chapter, the concerned licensee shall be provided with an opportunity for defense.

Chapter-10

Investigation and Inquiry

60. **Limitation for complaint:** Except in cases of the offenses punishable under Sections 43, 44, 45, 46 and 47, no complaint shall be entertained if it is not made within one year from the date of commission of any other offense punishable under this Act.

Provided that this Section shall not be deemed to bar the making of a complaint by a worker, who has gone for foreign employment, within one year after the date of his or her arrival in Nepal.

61. **Investigation and inquiry of offense relating to foreign employment:**(1) If the Department receives information directly or indirectly upon a complaint made by any person or in any other manner that any offense has been or is going to be committed in contravention of this Act or the rules framed under this Act, the Department may designate any officer of at least Gazetted Third Class as the investigation officer for the investigation of and inquiry into such offense.

(2) In making investigation of and inquiry into any offense pursuant to Sub-section (1), the investigation officer shall have the same powers as the police have under the prevailing laws, which include powers to arrest the person involved in the offense, search any place in relation to the offense, take custody of documents or other things related with the offense, record depositions and execute recognizance deeds.

(3) In making investigation of and inquiry into any offense pursuant to Sub-section (2), the investigation officer may get the accused to make deposition, and in the event that the immediately available evidences constitute sufficient grounds to show the accused as offender, get the accused to appear on the appointed dates, assigning the reasons for the same, release the accused

on bail or guarantee or detain the accused ,with the permission of the case trying authority, if the accused fails to furnish such bail or guarantee or detain the accused, with the permission of the case trying authority, for a maximum period of thirty days, not exceeding seven days at a time.

(4) In filing a case in his or her name after making investigation of and inquiry into pursuant to this Section, the investigation officer shall get advice of the government attorney.

(5) It shall be the duty of all the concerned including the police to provide necessary assistance to the investigation officer in the investigation and inquiry under this Section.

(6) The investigation officer investigating of and inquiring into an offense relating to foreign employment pursuant to this Section may, if there are appropriate and adequate reasons in the course of investigation, submit a report, accompanied by the appropriate and adequate reasons, to the Department for the suspension of the license of any licensee.

(7) The Department may, based on the report referred to in Sub-section (6), suspend the license of such licensee for a maximum period of six months.

62. Power to arrest:(1) Where any person has committed an offense referred to in Section 43 of this Act, the police employee may, if he or she considers that the person could abscond if that person is not arrested immediately, may arrest such person without warrant.

(2) The person arrested pursuant to Sub-section (1) shall be produced before the case trying authority within twenty four hours excluding the time required for journey.

Chapter-11

Trial and Settlement of Cases

63. **To be state cases:** The cases under this Act shall be state cases.
64. **Provisions relating to Foreign Employment Tribunal:**(1) For originally trying and settling cases other than those punishable by the Department as mentioned in this Act, the Government of Nepal shall, by a notification in the Nepal Gazette, constitute a three-member Foreign Employment Tribunal, under the chairpersonship of the Judge of Appellate Court, comprising the case trying authority of the Labor Court and the First Class Officer of Judicial Service recommended by the Judicial Service Commission.
- (2) The tenure of the chairperson and members of the Foreign Employment Tribunal shall be of four years.
- (3) The terms and conditions of service and facilities of the chairperson and members of the Foreign Employment Tribunal shall be as prescribed.
- (4) The Foreign Employment Tribunal shall exercise its jurisdiction as prescribed.
- (5) Pending the constitution of the Tribunal as referred to in this Section, the acts and action to be done and taken by the Foreign Employment Tribunal pursuant to this Act shall be done and taken by the concerned District Court.
- (6) The Government of Nepal shall provide such employees as may be required for the Foreign Employment Tribunal.
65. **Procedures of cases:** The cases to be filed under this Act shall be tried and settled in accordance with the Summary Procedures Act, 2028 (1971).

66. Appeal: (1) A party who is not satisfied with a decision made by the Department pursuant to this Act may make an appeal to the Government of Nepal within thirty-five days from the date of such decision.

(2) A party who is not satisfied with a decision made by the Foreign Employment Tribunal pursuant to this Act may make an appeal to the Supreme Court within thirty-five days from the date of such decision.

Chapter-12

Miscellaneous

67. Foreign Employment Department:

There shall be a Foreign Employment Department under the Ministry of Labor and Transport Management to carry out functions relating to foreign employment.

68. Appointment of Labor Attache: (1) The Government of Nepal shall appoint at least Gazetted officer as the Labor Attaché for a country where five thousand or more workers have been sent for foreign employment.

(2) The functions, duties and powers of the Labor Attaché shall be as follows:-

- (a) To give information to the Government of Nepal about the condition of labor and employment, factual information about immigration of the country where Nepalese workers are working and steps taken by that country for the protection of labor and international human rights and interests of workers,
- (b) If there arises any dispute between a worker, employer institution or licensee, to assist in the resolution of such dispute,

- (c) To make necessary arrangements for bringing back to Nepal any worker who has been helpless in the course of foreign employment,
 - (d) If any work corresponding to the skills of the Nepalese worker is available in the concerned country, to provide information thereon to the Government of Nepal,
 - (e) To take initiation in sending back the dead body of any worker, who has been a victim of natural calamity or who has died due to any cause, to Nepal with the assistance of the concerned country or employer institution,
 - (f) To make efforts to make a bilateral agreement at the governmental level for the supply of workers from Nepal,
 - (g) To provide necessary consultancy to workers, and discourage them to do any work other than that set forth in the agreement,
 - (h) To supervise any activity that may affect the workers, and
 - (i) To perform such other functions as prescribed by the Government of Nepal from time to time.
- (3) If both diplomatic mission and Labor Attaché are in any foreign country, the Labor Attaché shall have the obligation to perform the functions and duties set forth in Sub-section (1).

69. Repatriation of income of workers:(1) Saving amounts earned by the Nepalese workers who have gone for foreign employment shall be repatriated to Nepal through a bank or an institution licensed to provide banking service.

(2) Notwithstanding anything contained in Sub-section (1), any worker may carry with him or her the saving amount earned by him or her in the course of foreign employment when he or she comes back to Nepal.

(3) If any Nepalese worker repatriates the earning, earned by him or her abroad within the period set forth in the agreement, to Nepal through a bank or an institution licensed to provide banking service, the facility as prescribed shall be provided to such worker.

70. Prohibition on issuance of license: Notwithstanding anything contained elsewhere in this Act, if a person who has been punished by the court for any offense under this Act is a manager or director of any company and a period of five years has not elapsed after the service of such punishment, license shall not be issued to such institution.

71. Power of Government of Nepal to reward: (1) On recommendation of the Board, the Government of Nepal may, each year, make reward, along with a letter of appreciation, to one excellent licensee, on the basis of prescribed criteria.

(2) Other provisions on making reward to the licensee shall be as prescribed.

72. Provisions relating to health check up: (1) A worker who goes for foreign employment shall, prior to going abroad, get his or her health checked up by a health institution having obtained permission from the Government of Nepal.

(2) If a person who has gone for foreign employment after having undergone health check up pursuant to Sub-section (1) is compelled to return to Nepal because of a false health check up report given knowingly or recklessly or maliciously, the institution which has given such false health check up report shall bear the expenses incurred in going for foreign employment and returning to Nepal.

(3) There shall be an expert committee as prescribed to make decision whether a false health check up report has been given or not pursuant to Sub-section (2).

73. Provision of Labor Desk: (1) The Government of Nepal shall establish a Labor Desk at the international airport and other place, as required, in order to examine whether workers proceeding for foreign employment are going for such employment in accordance with this Act or not.

(2) The Labor Desk referred to in Sub-section (1) shall examine whether the workers have the labor permit, orientation certificate, receipt or voucher of payment of money as well as necessary documents.

(3) The Labor Desk referred to in Sub-section (1) shall send a report, accompanied by the records of workers who have gone for foreign employment, to the Ministry each week.

74. Provisions relating to opening of branch and appointment of agent: (1) A licensee may open its branch or appoint its agent in a country where it has sent workers by obtaining permission, as prescribed, from the Department.

(2) A licensee may open its branch or appoint its agent within Nepal by obtaining permission, as prescribed, from the Department.

(3) In appointing an agent pursuant to Sub-section (1) or (2), deposit as prescribed shall be furnished and the licensee itself shall be responsible for any acts and actions done and taken by such an agent.

75. Provisions on sending workers back to Nepal:(1) Where any worker becomes helpless by the reason that the worker has not got such facilities as set forth in the contract and such worker has to return to Nepal, the concerned licensee shall arrange for the returning of such worker to Nepal.

(2) Where Nepalese workers have to be immediately brought back to Nepal due to a war, epidemic, natural calamity in the country where such workers are engaged in employment, the Government of Nepal shall make arrangements for repatriating such workers through the diplomatic mission or Labor Attaché.

76. Returning to Nepal after expiry of term of visa: (1) A worker who has gone for foreign employment pursuant to this Act shall return to Nepal after the expiry of the term of visa issued by the concerned country.

(2) It shall be the obligation of the licensee to get a worker, who does not return to Nepal pursuant to Sub-section (1), to return to Nepal, with the assistance of the Department.

(3) The Government of Nepal may restrict the worker who has been so got returned to go abroad for three years after the worker has been got returned to Nepal pursuant to Sub-section (2).

77. Provision of facilities to licensee: The facilities, as prescribed, shall be provided to the licensee while doing transaction of foreign currency in the course of carrying on the foreign employment business.

78. To make public details relating to licensee: (1) The Department shall, from time to time, make public through various newspapers or its website details including the name, address, telephone number of the institution which has obtained license pursuant to this Act, details of agent or branch, if any, it has appointed or opened and the term of its license.

(2) Where any licensee is being subject to investigation for an offense referred to in this Act or the license of any licensee has been revoked, such details shall also be updated while making public the details pursuant to Sub-section (1).

79. Provisions relating to activities of Department:(1) The Department shall submit a monthly report of the activities which it has carried out pursuant to this Act to the Ministry of Labor and Transport Management, Government of Nepal.

(2) The Ministry may, from time to time, give necessary direction to the Department in relation to the activities to be carried out pursuant to this Act.

80. Record and report: (1) A licensee shall maintain, as prescribed, the records of workers sent for foreign employment. The Department may, at any time, inspect, procure and examine such records.

(2) Each licensee shall submit an annual report setting out the prescribed details to the Department within thirty days after the expiry of each financial year.

81. Delegation of powers:(1) The Government of Nepal may, by a notification in the Nepal Gazette, delegate any powers conferred to it under this Act to any governmental body or authority.

(2) The Board may delegate any powers conferred to it under this Act to the Executive Director.

82. Power to remove difficulties: If there arises any difficulty with the implementation of the objectives of this Act, the Government of Nepal may, by a notification in the Nepal Gazette, issue necessary orders for the removal of such difficulty.

83. Saving of acts done in good faith: No governmental employee shall be personally liable in relation to any act done in good faith in exercise of the powers conferred by this Act.

84. Prevalence of Act: The matters contained in this Act shall be governed by this Act, and the other matters shall be governed by the prevailing Nepal laws.

85. Powers to frame Rules: The Government of Nepal may frame necessary Rules for the attainment of the objectives of this Act.

86. Repeal and saving: (1) The Foreign Employment Act, 2042 (1985) is hereby repealed.

(2) All acts done and actions taken pursuant to the Foreign Employment Act, 2042 (1985) shall be deemed to have been done and taken under this Act.

87. Transfer of cases: The cases which have been investigated and inquired by the Department under the Foreign Employment Act, 2042 (1985) and filed with the District Court at the time of commencement of this Act shall be transferred to the Tribunal referred to in Section 64 after the constitution of that Tribunal.