

Trade Union (First Amendment) Act, 2055

Preamble:

Whereas it is expedient to make legal provision regarding registration, operation of Trade Union and other necessary provisions relating to it for the protection and promotion of professional and occupational rights *of the workers, and self employed workers, working inside or outside the enterprise, engaged in various industry, trade, profession or service* *.

Now, therefore the parliament has made this Act in the 21st year and amended in 27th year of the rule of His Majesty's King Birendra Bir Bikram Shah Dev.

CHAPTER – 1

Preliminary

1. Short title and commencement:

1. This Act may be called "Trade Union (First Amendment) Act, 2055"
2. This Act shall come into force immediately.

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

- a. "Enterprise" means the Enterprise established pursuant to Section 2(b) of the Labour Act, 2048 (1991).
- b. # "Workers" means *the workers engaged in any enterprise or outside any enterprise in any industry, trade, profession or service on permanent, temporary, piece rate or on contract basis or including workers and agriculture labourers and this expression shall also mean other personnel including self employed workers except those working in enterprise management and managerial level and as the head of its department, section, subsection and unit* *.
 - a. * "Agriculture Labourer" means *person earning livelihood in the agriculture sector on wage or on contract basis* *.
- c. "Manager" means the Manager appointed pursuant to section 2(f) of the Labour Act, 2048 (1991).
- d. "Trade Union" means the Enterprise level Trade Union registered under this Act for the protection and promotion of the occupational rights of the workers and this expression shall also mean Trade Union Association and Trade Union Federation.
- e. "Enterprise level Trade Union" means the Enterprise level Trade Union registered pursuant to Section 3.
- f. "Trade Union Association" means the Trade Union Association registered pursuant to Section 4.
- g. "Trade Union Federation" means the Trade Union Federation registered pursuant to Section 5.

- h. "Authorized Trade Union" means the Enterprise level Trade Union recognized pursuant to Section 11 to protect the rights of workers through collective bargaining with the management.
- i. "Working Committee" means the working committee constituted under the constitution of the Trade Union.
- j. "Member" means the worker of the concerned Enterprises who has taken the membership of the Enterprise level Trade Union.
- k. "Official" means the Chairman, Vice-Chairman, General Secretary and Treasurer of the working committee and the expression shall mean the members of the working committee.
- l. "Registrar" means the registrar appointed pursuant to Section 4 and this expression shall mean the officer authorized to use the registrar's power by His Majesty's Government in a notification published in the Nepal Gazette.
- m. "Register Book" means the Register book maintained pursuant to Section 16 for the registration of Trade Union.
- n. "Labour Court" means the Labour Court pursuant to Labour Act 2048(1991).
- o. "Prescribed" or "as Prescribed" means prescribed or as prescribed in the Rules framed or the order declared by His Majesty's Government in a notification published in the Nepal Gazette.

CHAPTER – 2

3. Registration of Enterprise Level Trade Union:

- 1. The workers of concerned Enterprise may constitute and Enterprise Level Trade Union to protect and promote their occupational rights.
- 2. In order to register an Enterprise Level Trade Union constituted pursuant to Sub-section(1) an application in the prescribed form signed by at least 10 members of the Trade Union recommended by the working committee along with the constitution of the Trade Union, prescribed fee and other prescribed particulars should be submitted to the Registrar.
- 3. The Registrar after receiving an application pursuant to Sub-section (2) if finds complied with the Act shall register the Trade Union within 15 days from the date of receipt of application or from the date of receipt of additional particulars as demanded pursuant to Section 6 and provide certificate to the applicant in the prescribed form.
- 4. Notwithstanding anything contained in Sub-section (3) the Enterprise Level Trade Union shall not be registered if at least twenty five percent workers of the concerned Enterprise are not members.
- 5. No workers shall be eligible to be member of more than one Enterprise Level Trade Union at the same time.

4. Registration of Trade Union Association:

- 1. At least 50 Enterprise Level's Trade Unions or *5000 agriculture labourers constituting one hundred labourers per district drawn from a minimum of twenty districts or 5000*

workers from similar nature Enterprise^{}, may constitute a Trade Union Association by mutual agreement.*

2. Notwithstanding anything contained in Sub-section (1) *at least 500 workers, and self-employed workers working in similar nature industries occupation from outside may constitute Trade Union Association by mutual agreement[#].*

1. A maximum of four associations constituted under this sub-clause shall be made eligible while establishing Trade Union Federation under Article 5 of this Act[#].
2. In order to register a Trade Union Association constituted pursuant to Sub-section (1) an application in the prescribed form by the official recommended by the working committee along with a copy of mutual agreement, the constitution of the trade union, prescribed fee and other prescribed particulars should be submitted to the Registrar.
3. The Registrar after receiving an application pursuant to Sub-section (2) if finds complied with the Act shall register the Trade Union Association within 15 days from the date of receipt of the application or from the date of receipt of additional particular as demanded pursuant to section 6 and provide certificate to the applicant in the prescribed form
4. Notwithstanding anything contained in the Sub-section (1) no Trade Union of the Enterprise shall be eligible to be member of more than one Trade Union Association at the same time.
5. After the registration of a Trade Union Association pursuant to Sub-section 4 its registration shall remain valid for one year even if the number of members of such Trade Union Association declines upto 10 percent.

5. Registration of the Trade Union Federation:

1. At least ten Trade Union Associations may constitute a Trade Union Federation by mutual agreement.
2. In order to register a Trade Union Federation pursuant to Sub-section (1) an application in the prescribed form by the official recommendation by the working committee along with a copy of mutual agreement, constitution of the Trade Union Federation, prescribed fee and other particulars should be submitted to the Registrar.
3. The Registrar after receiving an application pursuant to Sub-section (2) if finds complied with the Act shall register the Trade Union Federation within 15 days from the date of receipt of the application or from the date of receipt of additional particulars as demanded pursuant to Section 6 and provide certificate to the applicant in the prescribed form.
4. Notwithstanding anything contained in Sub-section (1) no Trade Union Federation shall be eligible to be member of more than one Trade Union Federation at the same time.
5. After the registration of a Trade Union Federation pursuant to Sub-section (3) its registration shall remain valid for one year even if the number of member of such Trade Union Federation declines upto 10 percent.

6. Additional Particular may be demanded:

1. Regarding the registration of a Trade Union Federation if the Registrar considers additional particular necessary, he may demand the required particulars within 7 days from the date of receipt of the application for the registration of Trade Union Federation.

2. Notwithstanding anything contained in Section 3, 4 and 5 no Trade Union shall be registered unless the particulars demanded pursuant to Sub-section (1) has been received.

7. Refusal of Registration: The Registrar may refuse to register a Trade Union in the following circumstance:

- a. if necessary particulars are not attached with the application.
- b. if at least 25 percent worker of the concerned Enterprise are not the member of the Enterprise Level Trade Union.
- c. if the name of the Trade Union coincides with the name of Trade Union which has already been registered.
- d. if the particulars mentioned in the Section 10 of the constitution of Trade Union has not been included.

7 (A) * Renewal of Trade Union:

1) Enterprise level Trade Union shall be renewed after every two years and Trade Union Association and Federation shall be renewed after every four years.

2) other procedures of Trade Union renewal shall be made as prescribed.

CHAPTER – 3

Operation, Management and Recognition of the Trade Union

8. Autonomous and Corporate Body:

1. The Trade Union shall be an autonomous and corporate body having perpetual succession.
2. The Trade Union shall have a seal of its own to carry out its activities.
3. The Trade Union may acquire, possess, dispose or manage by other means of its movable property as person.
4. The Trade Union may sue or be sued under its name as person.

9. Objectives:

1. The Objectives of the Trade Union shall be as follows:
 - a. To engage in economic and social development by improving the condition of workers.
 - b. To make an effort to establish good relationship between worker and management.
 - c. To assist in the development of Enterprise by increasing the productivity of Enterprise.
 - d. Try to make the workers dutiful and discipline.
2. In addition to the objective mentioned in Sub-section (1), the Trade Union Association and Trade Union Federation Shall have the following objective:-

- a. To conduct activities providing education to the worker.
- b. To establish relation with international institutions for the benefit of the workers.
- c. To provide necessary advice to His Majesty's Government in formulating the Labour Policy.
- d. In order to enhance social and economic standard of the workers publish facts beneficial to the workers by conducting necessary workshops, seminars etc.
- e. In order to protect and promote the rights of the workers negotiate with His Majesty's Government and take other necessary steps within the existing law.

9(A)* Rights, duties and functions of Trade Union:

In addition to the functions, duties and rights mentioned in the constitution of Trade Union. The functions, duties and rights of the Trade Union will be as follows:

- a. *To take necessary action and implement necessary programs in order to achieve the Trade Union objectives mentioned in Article 9 Sub-section (1) of this Act.*
- b. *To make the members to participate in the election of the Enterprise Level Authorized Trade Union.*
- c. *To allow the workers to follow the decision made by the Enterprise level Authorized Trade Union.*

9(B)* Right, Duties and Functions of Trade Union Association and Federation:

In addition to the functions, duties and rights mentioned in the constitution of Trade Union association and Trade Union Federation, the function, duties and rights of the Trade Union Association and Federation will be as follows:

- a. *To take necessary actions and implement necessary programs in order to achieve the objective of Trade Union Association and Trade Union Federation as mentioned in Article 9 Sub-section (2) of this Act.*
- b. *To make members to participants in the election of Trade Union Association and Trade Union Federation.*
- c. *To allow members to follow the decisions of the trade union association and Trade Union Federation.*
- d. *To follow necessary measures to resolve labour disputes by representing the workers in important and national level policy issues on labour disputes and to negotiate with the government, various types of Professional Associations and Federation and Enterprises.*
- e. *To negotiate with the concerned enterprises and management on behalf of the Enterprise Level Trade Union.*
- f. *To establish and operate different type of funds for the interest and welfare of workers.*
- g. *To make public the oppression on workers and Trade Union and to issue necessary warning to the concerned enterprises for the same.*

10. Constitution:

1. The following particulars shall be included in the Constitution of the Trade Union:-
 - a. Name and address of Trade Union;
 - b. Objective of the establishment of Trade Union;
 - c. Procedure of the formation of the working committee as well as the term of office shall be a maximum period of four years;
 - d. General Membership, the number of officials and the mechanism of their election;
 - e. Provision that only a worker, who is a Nepali Citizen and having served continuously for one year to be elected for the official post;
 - f. Provision regarding fund of the Trade Union and its auditing;
 - g. Provision regarding inspection and examination of the account of the Trade Union;
 - h. Provision to bring the vote of no confidence against the officials;
 - i. Provision regarding function, duty, right and meeting of the working committee and the General Assembly of Trade Union;
 - j. The procedure of amendment of the Constitution of Trade Union;
 - k. Provision regarding dissolution of the Trade Union;
 - l. Provision regarding liability and property of the Trade Union after its dissolution.

2. If any amendment is made in the Constitution of the Trade Union, the concerned *Trade Union*^{*} shall inform the Registrar with a copy of such amendment within 35 days after such amendment has been made and approval of such amendment have to taken from the Registrar

11. Recognition of the Authorized Trade Union:

1. The Authorized Trade Union shall be recognized for the collective bargaining with the management on behalf of the workers of Authorized Enterprise Level Trade Union.
1. 1(a)^{*} *If case only one Trade Union is being registered in any enterprise and if no Trade Union is being registered within three months of the registration, the Trade Union registered at first shall be regarded as an Authorized Trade Union.*

1(b)^{} The three months period, as being mentioned in 1A, shall be counted from the date of operation of this Act.*
2. The Authorized Trade Union recognized pursuant to Sub-section (1) shall inform to the Registrar and the Manager within 15 days after such recognition has been extended.
3. The Registrar shall provide the certificate of Authorized Trade Union as prescribed within 15 days from the date of receipt of notice pursuant to Sub-section (2).

4.^{*} *The election procedure of the Authorized Trade Union will be made as presumed.*

12. Presentation of Claim:

1. Notwithstanding anything contained in Section 74 (1) of the Labour Act, 2048 (1991) the working committee of the Authorized Trade Union on behalf of the workers may present claims in written form with the number and names of its representative to the management for collective bargaining.
2. The Authorized Trade Union shall not go on strike in Enterprise or do such action that may assist it in any manner without completing the procedure mentioned in Section 76 of the Labour Act, 2048 (1991).

13. Duration of Validity of the Recognition of the Authorized Trade Union:

The duration to bargain collectively on behalf of the workers of the Authorized Trade Union recognized pursuant in Section 11 with the management shall remain valid for two years from the date of issue of the certificate by the Registrar pursuant to Sub-section (3) of the same Section.

However, in case the registration of the Authorized Trade Union is being annulled or such Trade Union is dissolved, another Authorized Trade Union shall be elected within the three months of the dissolution.*

CHAPTER – 4

14. Appointment of the Registrar:

1. His Majesty's Government shall appoint Registrars as necessary for the registration of the Trade Union in accordance to this Act.
2. Notwithstanding anything contained in Sub-section (1) His Majesty's Government may, by notification published in the Nepal Gazette, authorize as necessary any other officer to use the power of Registrar.

15. Functions, Duties and Power of the Registrar:

The functions, duties and power of the Registrar shall be as follows:-

- a. To register the Trade Union.
- b. To maintain and keep up to date Register Book with detailed particulars of the registered Trade Union and other related particulars.
- c. To demand additional particulars necessary for the registration of the Trade Union.
- d. To take necessary action if the particulars, report or other documents required to be submitted by the Trade Union under the Act is not submitted or if false particulars are submitted.
- e. To specify the procedure of election of the Authorized Trade Union.

16. Register Book:

The Registrar shall maintain a separate Register Book to keep upto date the particulars, records etc. of the Trade Union.

CHAPTER-5

17. (1) The trade Union shall have its own separate fund and the fund shall contain the following amounts:-

- a. The amount obtained from the membership fee.
- b. The amount obtained from the national organizations in the form of Aid or Grant.
- c. The amount obtained from any other sources.

(2) All expenses incurred in the name of Trade Union shall be borne out from the Fund.

(3) The amount to be contained in the fund pursuant to Sub-section (1) shall be deposited by opening an account in any Commercial Bank within the Kingdom of Nepal.

18. Accounts and Auditing:

1. The accounts shall be maintained as mentioned in the Constitution of the Trade Union.
2. The accounts maintained pursuant to Sub-section (1) shall be audited by the auditor appointed by the General Meeting of the Trade Union.

CHAPTER – 6

Miscellaneous

19. Merging of the Trade Union:

1. *# If two or more than two Trade Unions like to merge into one Trade Union and if the majority of the General Assembly Members of Trade Union cast vote in favour of such merging, such Trade Union may constitute a new Trade Union by mutual agreement.*
2. In order to register a new *Enterprise Levelx* Trade Union constituted pursuant to sub-section (1), the officials authorized by the working committee shall apply to the Register in the specified form with a copy of the agreement mutually entered into by the merged Trade Unions, the Constitution of the Trade Union, prescribed fee and other prescribed particulars.

20. Information of the change in name:

If any Trade Union changes its own name the Registrar shall be informed of such changes within 15 days of the change of name.

21. Effect of change in name, merging or dissolution:

1. No effect shall occur in the power to be achieved or obligation to be fulfilled by such Trade Union only by the reason of change in name of Trade Union.

2. The merging of two or more than two Trade Unions into only one Trade Union or the dissolution of Trade Union in other Trade Union shall have no effect in the obligation to be performed by such Trade Union.

22.# Obligation to be fulfilled regarding contracts:

1. It shall be the duty of such Trade Union and the party to the contract entered with the Trade Union to fulfill the obligation of the contract entered into by the Trade Union itself or by the authorized officials on behalf of the Trade Union.
2. If a case has to be filed relating to disputes arising out of the agreement reached between the Trade Union and the management as per sub clause (1) the case should be filed at the Labour Court with in thirty days of such dispute or the cause for litigation.

23. No Case to be filed:

After complying with the procedure of this Act or the Labour Act, 2048(1991) if the Authorized Enterprise Level Trade Union or the Official of such Trade Union[#], while doing anything in the context of collective bargaining have affected by its action to the Enterprise, no case shall be filled against Trade Union or the officials in any court regarding such action.

23(a)* No transfer or promotion:

Except in special circumstances, the officials of the Enterprise Level Trade Union shall not be transfer or promoted without their consent.

24. Presentation of Annual Report:

1. The Trade Union shall submit to the Registrar an annual report of each year within three months from the end of fiscal year by auditing its account books showing clearly all property, loan including obligations of the Trade Unions.
2. In the annual report pursuant to Sub-section (1) the total number of members saying charges to the Trade Union and the particulars of the officials changed during the year shall also be included.

25. Cancellation of the Registration:

1. the Registrar shall cancel the Trade Union registered under this Act on the following circumstances:
 - a. If the Trade Union applies an application to the Registrar for the cancellation of its registration.
 - b. If it is proved that the registration of the Trade Union has been made by mistake or fraudulent act.
 - c. If anything is done contrary to this Act or the Regulations made under this Act.
- 3.

2. [#] *When canceling the registration of any Trade Union under the condition mentioned in part (b) and (c) of Sub-section (1) the Registrar shall give notice to the concerned Trade Union in written form asking clarification within fifteen days on the reason for the cancellation.*
3. *The registrar can cancel the registration of such trade unions if the trade union fails to submit clarification letter with in the specified period under sub clause (2) or the submitted clarification letter is found to be not satisfactory and not according to the law.*

26. Officials of Trade Union Association and Federation:

Notwithstanding anything contained elsewhere in this Act, the Trade Union Association and Trade Union Federation shall appoint from their working committees not exceeding 10 percent and 25 percent respectively of the total number of officials who are engaged in the protection and promotion of the rights of the worker, in the officials of the Trade Union Association and Trade Union Federation.

26(a)* *Trade Union Representation: While nominating the representatives from the Trade Union or representing the Trade Unions, where there are more than one Trade Union related to the subject matter, His Majesty's Government shall nominate or represent the Trade Unions on a proportionate or rotationary basis.*

27. Notice of Dissolution of Trade Union to be provided:

1. If a Trade Union is to be dissolved in accordance with the Constitution, the notice of such dissolution has to be provided to the Registrar by the concerned official with reason.
2. After receiving the notice of dissolution of trade Union pursuant to Sub-section (1) the Registrar shall register such notice only in the case of the Trade Union which has been dissolved in accordance with the Constitution.

27(a)* *Instituting of Case and Limitation: Other than things stated otherwise in this Act, if a case has to be filed against any person on the ground of contradiction to this Act or the regulations made under this Act, the case has to be filed within three months from the date of contradiction of the Act or from the date of cause to file such case.*

28. Offence & Punishment:

1. [#] *If any official, member or staff member of Trade Union misappropriate the property of the program or the fund operated by the Trade Union or to cause loss and damage to such property, the Labour Court may order such officials, members or staff members to compensate the property lost or damaged and fine to the extent of Rs.5000/- or one year's imprisonment or both.*
2. If the particulars, reports, notices, or any other documents to be submitted on behalf of the Trade Union in accordance with this Act or the rules under this Act is not submitted or false particulars are submitted, the Registrar may fine the concerned official to the extent of Rupees five hundred.

29. Appeal:

1. An appeal to the case initially decided by the Labour Court in accordance with this Act shall lie to the Appeal Court.
2. An appeal on the order made by the Registrar under this Act may be filed to the Labour Court.
3. An appeal may be filed within 35 days from the date of such proceeding and decision made by the Labour Court or the order made by the Registrar.

30. Special Power of His Majesty's Government:

His Majesty's Government may give necessary order or direction to restrict such activities of Trade Union if the activity of the Trade Union seem to create extra-ordinary situation thereby disturbing the peace and order or to go against the economic development of the country.

31. Power to Frame Rule:

His Majesty's Government may frame necessary rules to carry out the purpose of this Act.

* Additions made by the First Amendment.

Changes made by the First Amendment.

x Excluded by the First Amendment.