

# Statute of the Nepal Council of Arbitration(NEPCA)

## Statute of the Nepal Council of Arbitration

### (NEPCA)

1991

(With the First Amendment, 1998 (2055) )

#### Preamble:

An institution by the name of Nepal Council of Arbitration has been established to administer arbitration and other alternative methods of dispute resolution in an expeditious and less expensive manner by arranging co-operation from the concerned sector and to do institutional development of acts and proceedings related thereto, for the settlement of national and international disputes of development, construction, industrial, trade and other nature which are to be resolved through arbitration.

#### Chapter - 1

#### Preliminary

##### 1. Short Title and Commencement:

- (a) The name of this Statute shall be the **Statute of Nepal Council of Arbitration, 2048 (1991)**.
- (b) This Statute shall come into force on the date of registration of the Council.

##### 2. Definitions:

Unless the subject or context otherwise requires, in this Statute:

- (a) 'Statute' shall mean the **Statute of Nepal Council of Arbitration, 2048 (1991)**
- (b) 'Rules' shall mean the rules of the Council framed or to be framed under this Statute from time to time.
- (c) 'Member' shall also include the institutional member of this Council.
- (d) 'Council' shall mean the Nepal Council of Arbitration, which shall be called "NEPCA" in acronym form.
- (e) 'Executive Committee' shall mean the executive committee of the Council .
- (f) 'Central Office' shall mean the head office of the Council .
- (g) 'Branch' shall mean and include any branch , sub-branch and offices established under the Central Office in various places.
- (h) 'General Meeting 'shall mean the General Meeting of the Council.
- (i) 'Prescribed' or 'as Prescribed' shall mean any matters prescribed in this Statute or by rules or bye-laws to be framed under this Statute.
- (j) 'Local Authority' shall mean the Chief District Officer.

### **3. The Seal and Establishment of the Council:**

- (a) An association by the name of 'Nepal Council of Arbitration' shall be established after the commencement of this Statute.
- (b) This Council shall be a corporate body having perpetual succession and it may acquire, possess and dispose of the movable and immovable properties, mortgage or pledge or use such properties for other purposes as required for the benefit of the Council, sue or be sued and perform or exercise other functions, duties and rights in this connection.
- (c) The Council shall have its own seal and emblem.
- (d) This Council has been established with not-for-profit objective.

### **4. Address of the Council 's Office:**

Central Office of the Council shall be located at Kathmandu and its branches shall be located at such places as decided by the Executive Committee. Such branches may be opened only with the approval of the Local Authority.

## **Chapter -2**

### **5.Objectives of the Council:**

#### **1. Main Objectives:**

Subject to the prevailing laws, regulations and policy directives of His Majesty's Government, the Council shall have the following objectives:

- (1) To initiate, promote, protect and to institutionally develop activities relating to arbitration including other alternative methods of dispute resolution in Nepal.
- (2) To provide necessary suggestions to the concerned agencies for the periodical amendment and alteration to and development of prevailing laws and regulations relating to arbitration, by undertaking study, analysis and research on them; and to generate favourable public opinion for this purpose.
- (3) To arrange and manage all kinds of services, facilities and instruments as required for the settlement of disputes, of national and international nature arose within the territory of Nepal, to be settled through arbitration and other alternative methods of dispute resolution with the assistance of this Council.
- (4) To maintain relation with individuals and institutions involved in different profession and business, for arbitration of disputes of different subject matters and nature and to prepare the list of proper arbitrators.
- (5) To prepare a code of conduct for arbitrators and to create proper environment for its implementation.

## **(B) Supplementary Objectives:**

Mainly the following functions shall be performed for achieving the objectives of the Council :

- (1) To organize necessary training, instruction, symposium, workshop and talk programmes for the development of skilled Nepalese manpower needed for the resolution of all kinds of disputes through arbitration and other alternative methods.
- (2) To establish a well equipped library having collected books, journals, and rules and regulations of national, international and regional institutions, on arbitration and other alternative methods.
- (3) To acquire membership of other national, international and regional institutions having similar objectives, to provide its membership to them and to maintain relationship, enhance understanding, explore cooperation, exchange experiences and views with such organizations and institutions.
- (4) To receive, earn, acquire, possess and dispose of movable and immovable properties for the upliftment of the Council.
- (5) To hire or give on rent land and building for the purpose of the Council.
- (6) To encourage towards the development and promotion of provisions for the settlement of disputes, arising out of bilateral or multilateral contracts or agreements in the field of industries, trade and other business, through arbitration and other alternative methods of dispute resolution.

## **Chapter - 3**

### **Membership**

#### **6. Types of Membership:**

(a) Any institution, individual, agency, law practitioner, engineer, jurist, judge, construction contractor etc., directly or indirectly engaged in the activities and proceedings relating to arbitration shall be eligible for the membership of the Council.

(b) **Types of membership:** The Council shall have the following three types of members.

1. **Individual member**
2. Life member
3. Ordinary member

c. Honorary member

#### **(2) Institutional member**

1. Ordinary member
2. Permanent member

(c) Executive Committee may respectfully invite a renowned person directly or indirectly associated with the activities concerning arbitration as the Chief Patron of the Council.

## **7. Qualifications for Membership:**

(a) The Executive Committee may grant honorary membership to any person who has made an outstanding contribution on the basis of special study and experiences on activities relating to arbitration.

(b) An Individual who is a graduate and has been involved in activities relating to arbitration shall be eligible for individual membership of the Council.

1. Individuals who are qualified under sub-section (b) and have attained the age of 40 years shall be eligible for life membership.
2. Any institution established under the prevailing laws and associated directly or indirectly with the activities relating to arbitration shall be eligible for institutional membership.

## **8. Membership Fee:**

(a) Entrance fee and annual fee for an institutional member shall be Rs. 3,000 and Rs.1,5 00 respectively.

1. Entrance fee and annual fee for an institutional permanent member shall be Rs. 3,000 and Rs. 20,000 respectively.
2. Entrance fee and annual fee for an ordinary individual member shall be Rs.2,000 and 600 respectively.
3. Life membership fee shall be as follows:
4. Entrance fee Rs.2,000.
  1. From individuals within the age of 65 years and above Rs.2,200.
  2. From individuals within the age of 60 to 65 years Rs. 3,200.
  3. From individuals within the age of 55 to 60 years Rs. 4,600.
  4. From individuals within the age of 50 to 55 years Rs. 6,800.
  5. From individuals within the age of 45 to 50 years Rs. 9,000.
  6. From individuals within the age of 40 to 45 years Rs. 11,200.

(c) Executive Committee may increase or decrease the membership fee as per necessity.

(d) Annual membership fee shall have to be paid upto the last day of Ashadh. (mid-July) in each year. Members renewing their membership upto the last day of the month of Aswin shall have to pay an additional fee of 10% (ten percent) and 25% (twenty five percent) for another additional three months.

## **9. Provision for Membership:**

Executive Committee may, in accordance with the Statute, grant membership to the individuals or institutions recommended by any two members of the Council.

## **10. Termination and Suspension of Membership:**

(a) Membership of the Council shall be terminated in the following circumstances:

(1) If the resignation submitted to the Executive Committee is approved.

(2) If a member dies.

(3) If an institutional member is dissolved or merged with other institution.

(b) Membership of any member failing to pay the membership fee within the period as prescribed in paragraph (d) of Section 8 shall *ipso facto* be terminated. Such a member shall have to repay the entrance fee for re-acquiring the membership .

(c) Executive Committee may suspend the membership of any member, for a given period of time, if the member has committed any acts contrary to the interest of the Council, provided that such decision shall be required to be approved by the General Meeting of the Council

## **CHAPTER - 4**

### **General Meeting and the Executive Committee**

## **11. Constitution of General Meeting:**

General Meeting shall comprise of all types of members of the Council .

## **12. General Meeting:**

(a) Annual General Meeting of the Council shall be held within 3 months after the end of each fiscal year .

(b) Notice of the Annual General Meeting shall have to be served to every member at least 21 days prior to such meeting. Such notice shall have to contain the place, date and time and agenda of the meeting.

(c) Executive Committee may call Extra -ordinary General Meeting at any time as and when it deems necessary.

(d) The Chairman shall, on a written requisition of 25% members of the total members of the Council, call an Extra-ordinary General Meeting within 15 days from the receipt of such a requisition.

1. No subject matter, other than as prescribed, shall be discussed in Extra-ordinary General Meeting except with the prior permission of the Chairman.

(f) For the purpose of General Meeting or Extra Ordinary General Meeting, the presence of at least 25% of the total members shall be deemed to have constituted a quorum.

(g) In case of failure to hold a meeting due to the lack of quorum as per sub-section (f) the meeting shall be called again by giving 7 days notice and, in such a event, the presence of 10% of the total members will constitute a quorum .

### **13. Functions, Rights and Duties of the General Meeting:**

Functions, Rights and Duties of the General Meeting shall be as follows:

(a) To present and discuss on previous progress report, and to discuss on the statement of income and expenditure.

(b) To elect the members of the Executive Committee.

(c) To formulate the policies of the Council.

(d) To give directions to the Executive Committee.

(e) To formulate the programmes of the Council for the forthcoming year.

(f) To approve the estimated budget of annual income and expenditure of the Council.

(g) To appoint an auditor for the forthcoming fiscal year.

(h) To amend the Statute.

(i) To carry out any other functions as prescribed.

### **14. Constitution of the Executive Committee:**

(a) Members of the Council shall constitute, from among themselves, a nine-member Executive Committee. The Executive Committee shall elect Chairman, Vice-chairman, Secretary and Treasurer from itself.

(b) The tenure of members of the Executive Committee shall be of three years.

(c) Membership of the Executive Committee shall be terminated in the following circumstances:

(1) If he tenders a resignation in writing.

(2) If the General Meeting adopts a no-confidence resolution.

(3) If he fails to attend three consecutive meetings of the Executive Committee without giving reasonable notice.

Provided that, for the purpose of this Sub-section, the concerned member shall not be deprived of an opportunity to give a clarification therefor.

(4) If he ceases to be a member of the Council.

### **15. Meetings of the Executive Committee:**

(a) Meeting of the Executive Committee shall be held at such place and time as notified by the Secretary on the advice of the Chairman.

(b) Meeting of the Executive Committee shall be held at least twice in each fiscal year.

(c) The quorum of the Executive Committee shall be five.

(d) The decisions of the Executive Committee shall be recorded.

## **16 . Functions, Rights and Duties of the Executive Committee:**

Functions, Rights and Duties of the Executive Committee shall be as follows:

- (a) To implement the resolutions, policies and directives of the General Meeting.
- (b) To appoint a returning officer.
- (c) To nominate a member from among the members of the Council until the General Meeting is held, in case any seat to the membership of Executive Committee falls vacant.
- (d) To implement or cause to implement the objectives of the Council.
- (e) To set programmes and to perform appropriate functions for the accomplishment of the objectives of the Council.
- (f) To prepare and submit the budget of the Council to the General Meeting.
- (g) To appoint officials and staff necessary for the Council or to dismiss them and to fix their terms and conditions of service and remuneration.
- (h) To delegate all or some of the rights and duties of the Council to its branches or to any staff.
- (i) To prepare a panel of experienced persons for arbitration of disputes of different subjects and nature.
- (j) To frame and implement or cause to be framed and implemented rules and bye-laws necessary to perform the functions pursuant to the objectives of the Council.

## **Chapter - 5**

### **Functions, Rights and Duties of the Office Bearers**

#### **17.Functions, Rights and Duties of the Chairman :**

- (a) To call meetings of the Executive Committee and make necessary correspondence on behalf of the Council.
- (b) To take responsibility of leadership as the chief of the Council.
- (c) To implement or cause to be implemented the resolutions of the General Meeting.
- (d) To chair the General Meeting or the Meetings of the Executive Committee, and to cast a deciding vote in case of even division of votes in the meetings.
- (e) To perform other necessary functions in the interest of the Council.

#### **Functions, Rights and Duties of the Vice-Chairman:**

- (a) To assist the Chairman in his functions or to perform other functions as delegated in writing by him.
- (b) To perform and exercise all duties and rights of the Chairman in his absence.
- (c) To examine the performance of the Council and to inform the Chairman of the same.

**Functions, Rights and Duties of the Secretary :**

- (a) To keep and cause to keep records of the resolutions adopted by the Executive Committee and to implement them accordingly.
- (b) To take responsibility of the day-to-day business of the Council and to take care of and control the staff and personnel administration.
- (c) To perform or cause to perform other functions as provided for in the Statute and Rules.
- (d) To maintain coordination among different branch offices.
- (e) To perform all other functions for the betterment of the Council as per the direction of the Executive Committee or on the advice of the Chairman.

**Functions, Rights and Duties of the Treasurer:**

- (a) To submit reports on income and expenditure to the Annual General Meeting and to the Meetings of the Executive Committee.
- (b) To raise funds, to maintain and cause to be maintained the accounts of income and expenditure of the Council.
- (c) To prepare and cause to be prepared annual budget of the Council and submit it to the Annual General Meeting through the Executive Committee.
- (d) To perform and cause to be performed other functions as prescribed.

**Chapter - 6****Financial Provisions****18. Financial Resources:**

- (a) The Council shall have its own separate fund.
- (b) The fund of the Council shall comprise of the following amounts:
  - (i) Membership fees of the members,
  - (ii) Grants, donations or any assistance made available to the Council by His Majesty's Government and any other national, international and regional organizations or agencies.
  - (iii) Any amount acquired from the tangible and intangible assets of the Council.
  - (iv) Any other amounts.



**19. Description of Tangible and Intangible Assets:**

- (a) The records of the tangible and intangible assets of the Council shall be maintained accurate and up-to-date.
- (b) Expenditure on behalf of the Council shall be made as prescribed. Until such prescription, it shall be made as determined by the Executive Committee.

**20. Operation of Fund:**

- (a) The accounts, to be opened in the name of the Council in different banks, shall be operated by joint signature of the Treasurer, and the Chairman or Secretary or any other person as decided by the Executive Committee.
- (b) The financial year of the Council shall commence from the first day of Shrawan (mid - July) of each year and end on the last day of Ashadh (mid - July) of the next year.

**21. Audit :**

- (a) Audit of income and expenditures including the balance of tangible and intangible assets of the Council of every year shall be carried out by an auditor recognized by His Majesty's Government and appointed by the General Meeting.
- (b) The audit report of the auditor of the Council shall be submitted to the local authority in each year.
- (c) Accounts of income and expenditures of the Council shall be maintained accurate and up-to-date under the supervision of the Treasurer.
- (d) Statement of income and expenditure shall be submitted through Treasurer to the Annual General Meeting.

**Chapter - 7****22. Provisions Relating to Election:**

The Executive Committee shall appoint a returning officer for the election of the Executive Committee. Procedures relating to election shall be as prescribed and, until such prescription, it shall be as determined by the returning officer.

**23. Qualifications To Be a Candidate:**

Individuals representing institutional membership or individual ordinary members or life members of the Council shall be eligible to take part and to be a candidate in the election of the Executive Committee.

**23A. Observer May be Invited**

An individual or government agency or non-governmental organisation associated with arbitration may be invited as decided by the Executive Committee as an observer in the meetings of the Executive Committee or General Meeting.

**24. Vote of No-confidence:**

(a) Any member of the Executive Committee of the Council may be removed from the membership of the Executive Committee by a no-confidence resolution passed by two third majority of the members attending the General Meeting.

(b) Discussions on a no - confidence motion may be held only in an Extra-ordinary General Meeting. A written application of at least ten percent (10%) members from among the total members of the Council or a decision of the Executive Committee shall be required to move a no - confidence motion under this Article.

**25. Amendment to the Statute:**

If it is required to amend this Statute, Executive Committee or 25% members of the total members of the Council may submit a motion to that effect to the General Meeting through the Executive Committee. A resolution to that effect will be adopted by a two-third majority of the total members being present and having casted their votes in the General Meeting. Amendment to the Statute shall be made with the approval of the Local Authority.

**26. Power to frame Rules and Bye - laws:**

The Executive Committee, subject to the Association Registration Act, 2034 (1977), Rules made thereunder and this Statute, may frame necessary rules, bye - laws and working directives for the fulfillment of the objectives of the Council and to regulate its internal working procedure.

**27. Dissolution of the Council:**

In the case of dissolution of the Council for being unable to run its activities under the Statute of the Council or by any reason whatsoever, all the properties of the Council shall be transferred to His Majesty's Government.

**28. Special Provisions:**

(a) The Executive Committee may delegate some of its authority to any office bearer/member of the Executive Committee or to any other person. Terms and conditions of service and designation of the person to perform functions by obtaining such delegated authority shall be as prescribed by the Executive Committee.

(b) The Executive Committee may constitute different Committees and Sub - Committees from among the members for the fulfillment of the objectives of the Council.

(c) The Executive Committee constituted at the time of registration of the Council shall be deemed to have constituted under this Statute and the tenure of such committee shall remain until the first Annual General Meeting of the Council is held.

(d) Annual General Meeting shall be held within one year from the date of registration of the Council.

**29. Secretariat:**

The Executive Committee shall determine the provisions for the management of the Secretariat and for the appointment and other terms and conditions of service of the staff working therein.

**30. Interpretation:**

Interpretation of this Statute shall be made by the Executive Committee.

**31. Savings:**

In matters specifically provided for in this Statute, the provisions of this Statute shall prevail and in other matters, the provision of existing laws shall apply.

**32.** Scope of this Council shall be in accordance with the Association Registration Act, 2034 (1977).

Ammended by the 92nd Board Meeting