



# Securities Market Regulation in Nepal: A Legal and Institutional Perspective

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## Abstract

*This study explores the legal and institutional framework governing the securities market in Nepal, emphasizing its significance in mobilizing capital, fostering investment, and promoting economic growth. It highlights the transformative role of the Securities Board of Nepal (SEBON) in regulating and modernizing the market through legal instruments such as the Securities Act, 2063, and complementary regulations including those on mutual funds, credit rating, depository services, and stock exchange operations. The research underscores key milestones in Nepal's securities regulation, from the early Companies Act of 1936 to the establishment of NEPSE and the evolution of investor-friendly systems like C-ASBA and MeroShare. Despite notable progress, the study identifies persistent challenges: weak enforcement, overlapping institutional mandates, insufficient technical capacity, and legal gaps that hinder full market efficiency and investor protection. While recent reforms align with international standards, especially those of the WTO, the current regulatory framework remains inadequate to meet the demands of a rapidly evolving financial landscape. The paper concludes by advocating for comprehensive legal reforms, institutional strengthening, and enhanced governance mechanisms to develop a robust, transparent, and globally competitive securities market in Nepal.*

**Keywords:** *Securities, Regulation, Market, Investors*

## 1.1 Introduction

The securities market plays a crucial role in the economic development of any country by mobilizing savings and directing investments toward productive sectors. Security market is a place where securities are bought and sold, the facilities and people engaged in such transactions, the demand for and availability of securities to be traded, and the willingness of buyers and sellers to reach agreement on sales<sup>324</sup>. In Nepal, the regulation of the securities market is fundamental in ensuring transparency, efficiency, and investor protection. Given the growing importance of capital markets in the country's financial landscape, a comprehensive

<sup>324</sup> Dimitri Vayanos, Strategic Trading in a Dynamic Noisy Market, (2001) Access at <http://eprints.lse.ac.uk/archive/00000447>. Visited date 08/08/2024

understanding of the legal and regulatory framework governing securities is essential. Securities market's major function is to provide line between saving and investment thereby facilitating the creation of new wealth.

A securities market is an exchange where sale and purchase transactions of securities are conducted on the basis on demand and supply. Securities market is an important economy indicator in capital market embracing the buyers and sellers to assist the sale and resale the corporate securities. It is a broad term embracing a number of markets in which securities is bought and sold. Securities market means market, place or facilities, which continuously bring to the buyer and seller into one place to purchase, sell or transfer of securities.

The Nepalese securities markets is being modernized due to some structural changes in the recent years. The full-fledged dematerialized transaction of securities, the introduction of ASBA, C-ASBA and Meroshare system in the primary market enabling the applicants from 77 districts to access the service through more than 2500 BFIs as service providers, branch expansion of merchant bankers and stockbrokers outside of Kathmandu valley and adoption of on-line trading system have made Nepalese securities markets techno-friendly, investment friendly and countrywide resulting increased attraction of public towards the securities markets in recent days<sup>325</sup>. The total number of stakeholders who operate account in market is around 64 lakh above which is 21.9% of total population of Nepal and number of stakeholder in secondary market is around 38 lakh<sup>326</sup>. Through securities, market entrepreneurs issue different kinds of securities such as shares, debentures, bonds etc. it helps to transfer capital resources from those with surplus of resources to those that can use them more productively<sup>327</sup>.

Irrespective of slowdown in the global securities market, Nepalese securities market witnessed a remarkable growth after the establishment of SEBON. SEBON as regulating body actively initiated the reform and development activities in the Nepalese securities market<sup>328</sup>. It helps in the efficient mobilization of capital resources, which ultimately enhance the economic activities and fostering the national economy.

Nepalese capital market had given proper structure in June 1973 with the establishment, SEBON as the market regulator<sup>329</sup>. Since its establishment, SEBON has been concentrating its efforts on improving the legal and statutory frameworks, which are the bases for the healthy development of capital market. SEBON is the supreme body to regulate the Nepalese securities market. As a part of its continuous efforts to build a sound system, the Securities Exchange Act,

<sup>325</sup> INVESTORS' HANDBOOK ON SECURITIES MARKETS AND COMMODITY DERIVATIVES MARKETS  
Securities Board of Nepal (SEBON) 2020

<sup>326</sup> SECURITIES BOARD OF NEPAL ,ANNUAL REPORT, Fiscal Year 2022/23

<sup>327</sup> G.N. Bajpai, *Significance of Securities Market in the Growth of an Economy: an indian context* INDIAN  
SECURITIES MARKET REVIEW(2002).

<sup>328</sup> SECURITIES BOARD OF NEPAL ,ANNUAL REPORT, Fiscal Year 2022/23

<sup>329</sup> SECURITIES BOARD OF NEPAL, *ANNUAL REPORT 2079/80*, KATHMANDU at 6-14 (2023)

was 1983 amended for the second time on Jan 30, 1997. This amendment paved the way for establishing SEBON as an apex regulatory body as it widened the horizon of SEBON by bringing Market intermediaries directly under its jurisdiction and also made it mandatory for the corporate bodies to report annually as well as semi-annually regarding their performance<sup>330</sup>.

In present open economic system, private sector investment is essential for bold national economy. Without the trust of private sector, the government cannot build investment friendly environment and due to this reason, the government fails to cope the worldwide challenges.<sup>331</sup> The securities market provides mechanism to mobilize community savings for productive investment, which is necessary for the economic growth. The nation can cultivate the corporate culture by collective effort of the private sector. To established and mobilized, the mechanism there must be sound legal background for this enactment and enforcement of law is essential<sup>332</sup>.

## 1.2 Legal framework on Securities Market in Nepal

Securities markets are vital to the growth, development and strength of the market economy. They support corporate initiatives, finance the exploitation of new ideas and facilitate the management on financial risk. To enhance an efficient securities market it should be systematic as well as regulated. The systematic and regulated securities markets are enhanced with effective legislative frameworks and institutional management. Such regulatory framework should ensure fair, efficient and transparent market, thus it may result as strong confidence of the investors towards the securities markets and such market also requires being less risky and highly liquid. Nepalese legislative frameworks, policies and institutional setup regarding to securities markets, its development and regulation system is in early stage of growth. The first legislative framework was Companies Act, 1936 that had introduced the concept of securities regulation under the provision of publication of prospectus, issue and transfer of shares, etc. Introduction of the Company Act, 1964 and the first issuance of government bond in 1964 were the other efforts regarding to securities market regulation in Nepal. Efforts were reinforced in 1976 with the establishment of Nepal Securities Trading Centre (NSTS) of which main objective was to mobilize the capital through market mechanism for corporate development in the industrial, agricultural and other sectors of the Nation. Until 1983, there was not expressly statutory provision regarding securities market regulation in Nepal<sup>333</sup>.

### 1. Securities Act, 2063

<sup>330</sup> GANESH SHRESTHA, *A Brief Introduction of Nepalese Securities Market* (PAPER PRESENTED AT THE 18TH GROUP OF THE GLOPAC FELLOWSHIP PROGRAM, TOKYO, JAPAN, 2021).

<sup>331</sup> M. CHAUDHARY, D. JOANNAS & R. PEREIRA, *CAPITAL MARKET INSTRUMENTS: ANALYSIS AND VALUATION* 9 (Macmillan Publisher 2005)

<sup>332</sup> SANDIP POUDEL Private Sector Investment: Opportunity And Challenges In Nepal VOL. 17, No. 18, April.26,2024 (Baishak,14. 2081) Publisher and Editor: Keshab Prasad Poudel Online Register Number: DOI 584/074-75

<sup>333</sup> AMRIT KHAREL, LEGAL FRAMEWORK FOR SECURITIES MARKET DISPUTE RESOLUTION IN NEPAL ACCESS at <https://doi.org/10.3126/pjri.v4i1.50157>

The main objectives of the Securities Act, 2063 is to manage and regulate the activities of persons involved in securities market and securities business by regulation issuance. Subscription, purchase, sale and exchange of securities for protection of Interest of investors, to invest in securities by developing capital market to mobilize necessary capital for economic development of the country<sup>334</sup>

## 2. **Commodities Exchange Act, 2074**

The main objective of this act to regulate a commodities market, a clearing and settlement house and warehouse for development and operation of commodities exchange market and protection of investors.

## 3. **Asset (Money laundering prevention Act 2064**

The main objective of this act to prevent the laundering of money, tax evasion or terrorist activities or invests in such assets related activities. Its amendment in 2080 is also related to prevention of fraudulent activities.

## 4. **Specialized Investment Fund Regulation, 2075**

This regulation gives a legal basis for the establishment of a specialized Investment fund. Such funds can collect capital from individual investors in a fund and the company to maximize the returns of investment invests such fund. In exercise of the powers conferred by section 116 of the Securities Act, 2063 (2006), the Securities Board of Nepal, with the consent of Government of Nepal made this Regulation.<sup>335</sup> The "Specialized Investment Fund Regulation 2075" introduced by the Securities Board of Nepal (SEBON) is a good move forward as it will allow domestic pooling of capital and mobilize startups and small business to scale up, but a lot more needs to be clarified in the regulation for Venture Capital (VC) and Private Equity (PE) industry to truly take off.

## 5. **Securities Listing and Trading Rules, 2075**

These rules are concerned with the listing of equity shares and bonds of companies and rules regarding their trading in the stock exchange. The shares of a company wanting to carry trade in share have to be listed in a stock exchange. The listing is overseen by the Board, the stock exchange and has to fulfill the requirements. The shares can be delisted by the stock exchange, Board or voluntarily by the company. Also the shares can be relisted in a stock exchange. Stock exchange shall have to make agreement with corporate body before listing the securities as per the format prescribed by the schedule-1<sup>336</sup>.

## 6. **Securities' Central Depository Services Regulation, 2067**

"Central Depository Service" means taking custody of the listed securities from the concerned securities owners and performing the jobs of maintaining their securities account, performing clearing and settlement of the securities transaction including transfer

<sup>334</sup> Preamble, Securities Act, Nepal 2063.

<sup>335</sup> **Specialized Investment Fund Regulation, 2075**, Preamble.

<sup>336</sup> **Securities Listing and Trading Rules, NEP. 2075**, Rule 5.

of securities and other similar jobs<sup>337</sup>. This regulation dealt with the establishment of a Central Depository Company, its powers and Functions. CDS and Clearing Limited, a company established under the company Act is a company promoted by Nepal Stock Exchange Limited (NEPSE) in 2010 to provide centralized depository clearing and settlement services in Nepal. The main objective of the company is to act as a central depository for various instruments (Equity, Bonds, and Warrants etc) especially to handle securities in dematerialized form. The company is inaugurated on 31 March 2011.

Recently CDSCL has published a "Securities central depository By-Law" which was provided for in this Securities Central Depository Services Regulation, 2067.

## 7. Credit Rating Regulations 2068

A credit rating is a quantified assessment of the creditworthiness of a borrower in general terms or with respect to a particular debt or financial obligation. A credit rating can be assigned to any entity that seeks to borrow money an individual, corporation, state or provincial authority, or sovereign government<sup>338</sup>. Credit rating means assessing the quality of securities of any issue and the creditworthiness of any individual, corporation and rating them and the processes therein<sup>339</sup>. Rule 3 of this regulation makes it a must for following issue to be credit rated.

## 8. Mutual Fund Regulations, 2067.

A mutual fund is a type of financial vehicle made up of a pool of money collected from many investors to invest in securities such as stocks, bonds, money market instruments, and other assets<sup>340</sup>. In exercise of the power conferred by Section 116 of Securities Act, 2063 (2007), Securities Board of Nepal has, upon the approval of the Government of Nepal, made the Mutual Fund Regulations.

## 9. Securities Businessperson (Stock Broker, Securities Dealer and Market Maker) Regulations, 2064.

This Regulation has made by the SEBON in exercise of the power covered by Sec. 116 of the Securities Act, 2063 with the approval of GON. This regulation is aimed to regulate the securities Business of Securities Businessperson. The main provisions of their Regulation are licensing of Securities Business, conditions and standards for operation of a Securities Business under this provision, the Board may taking into account the condition of capital market. The healthy operation of Securities Business and protection of the interest of investors, impose conditions necessary for the maintenance of an organized market when issuing a license to act as Securities Businessperson.

<sup>337</sup> Securities Central Depository Services Regulation, NEP. 2067, Rule 2(e).

<sup>338</sup> Investopedia, Credit Rating, *Investopedia* <https://www.investopedia.com/terms/c/creditrating.asp> (last visited Aug. 25, 2024),

<sup>339</sup> Rule 2(d), Credit Rating Regulations NEP 2068

<sup>340</sup> Investopedia, Mutual Fund, *Investopedia* <https://www.investopedia.com/terms/m/mutualfund.asp>. (last visited Aug. 25, 2024),

## 10. Stock Exchange Operation Regulations, 2064

These regulations were formulated regarding the operation, licensing, qualifications and trading of stock exchange. The stock exchange needs to get a recommendation before starting from the SEBON<sup>341</sup>. Then after the establishment the stock exchange needs to file application with all necessary particulars to the Board to get a license<sup>342</sup>. The Board with thorough examination of the particulars and information provided will decide whether to grant the license or not<sup>343</sup>. The then Existing NEPSE had to also file for issuing license after the commencement of these regulations within 6 months<sup>344</sup>.

## 11. Other Sectoral Legislations

### • The Companies act 2063

The Companies Act 2063 (2006) of Nepal governs the legal framework for the incorporation, operation, and regulation of companies in the country. It aims to promote transparent, responsible, and efficient corporate practices by defining the rights, duties, and responsibilities of companies, shareholders, and directors. The Act categorizes companies into private, public, and non-profit types and outlines provisions for registration, share issuance, meetings, audits, mergers, and liquidation. It also emphasizes good corporate governance and introduces mechanisms for dispute resolution, ensuring protection of investors and stakeholders while fostering a conducive environment for business growth in Nepal.

### • Nepal Rastra Bank Act 2002

The Nepal Rastra Bank Act 2002 establishes Nepal Rastra Bank (NRB) as the central bank of the country, with the primary objective of maintaining price stability and ensuring a secure, stable, and efficient financial system. The Act outlines NRB's functions, including formulating and implementing monetary policy, regulating and supervising banks and financial institutions, managing foreign exchange reserves, and issuing currency. It grants NRB autonomy in its operations and governance, including the authority to license and monitor financial institutions, and take corrective actions when necessary. Overall, the Act strengthens NRB's role in safeguarding Nepal's financial stability and promoting economic development.

### • Bank and Financial Institution Act 2073

The Bank and Financial Institution Act 2073 (BAFIA) of Nepal provides a comprehensive legal framework for the licensing, regulation, supervision, and management of banks and financial institutions (BFIs) to ensure stability, transparency, and efficiency in the financial sector. It classifies BFIs into categories (A, B, C, and D), sets governance standards, prescribes capital requirements, and enforces risk management practices. The Act

<sup>341</sup> Stock Exchange Operation Regulations, NEP 2064, Rule 3.

<sup>342</sup> *Id.*, Rule 4.

<sup>343</sup> *Id.*, Rule 6.

<sup>344</sup> *Id.*, Rule 7.



empowers Nepal Rastra Bank to oversee all BFIs, issue directives, and take corrective actions when needed. It aims to protect depositors' interests, strengthen financial discipline, and promote public confidence in the banking system.

- **Foreign Investment and Technology Transfer Act 2019**

The Foreign Investment and Technology Transfer Act 2019 (FITTA 2075) is Nepal's key legislation aimed at promoting foreign direct investment (FDI) and facilitating technology transfer to boost economic growth and industrialization. Replacing the 1992 Act, FITTA broadens the definition of foreign investment to include equity investments, reinvested earnings, lease financing, venture capital funds, secondary market investments, technology transfers, and capital raised through foreign securities markets. It recognizes Non-Resident Nepalis as foreign investors and sets a minimum investment threshold of NPR 50 million. The Act provides for repatriation of profits, protection against expropriation, and ensures national treatment to foreign investors. Approval authorities are designated based on investment size: the Department of Industry for investments up to NPR 6 billion and the Investment Board Nepal for larger amounts. FITTA also mandates approval for technology transfer agreements and aims to streamline services through a Single Stop Service Centre. Overall, the Act seeks to create a more transparent, investor-friendly environment to attract sustainable foreign investment into Nepal.

### **1.3 Institutional Bodies of Securities Market in Nepal**

For the development of well managed and systematic securities market there is always need of strong regulatory mechanism system. The institutional set up /regulatory agencies/institutional management established by different legislations as regards to Nepalese securities markets are mentioned as follows:

#### **1. Securities Board of Nepal (SEBON)**

Securities Board of Nepal was established by Nepal government on June 7, 1993 and is now functioning as an apex regulator of the Securities Markets in Nepal. As per the Securities Act 2063, the major objectives of SEBON are to regulate issue and trading of securities and market intermediaries, promote market development and protect investor's right.

#### **2. Nepal Stock Exchange (NEPSE)**

The history of stock exchange began with the floatation of shares by Biratnagar Jute Mills Ltd and Nepal Bank Ltd. in 1937. Introduction of the Company Act in 1964, the first issue of Government Bond in 1964 and the establishment Nepal Securities Trading Center (NSTS) were other significant development relating to capital markets. After the enactment of first Securities Exchange Act 1983, the NSTS was converted in to Securities Exchanges Center which was effective from 1984. Securities Exchange Center was established with an objective of facilitating and promoting the growth of capital markets. Before conversion in to Stock Exchange it was the sole institution regarding to operating and regulating primary and secondary markets of government and public securities<sup>345</sup>.

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<sup>345</sup> NEPAL STOCK EXCHANGE, AN INTRODUCTION OF NEPAL STOCK EXCHANGE, RESEARCH AND PLANNING DIVISION, NEPSE, at 1 (1991).

GON under a program initiated to reform capital market converted Securities Exchange Center into Nepal Stock Exchange in 1993 by amending the existing Securities Exchange Act, 1983. Nepal stock Exchange (NEPSE) is a non-profit organization, operating under Securities Act, 2063 (previously Securities Exchange Act 1983). The Basic objective of NEPSE is to impart free marketability and liquidity to the government and corporate securities by facilitating transactions in its trading floor through market intermediaries, such as Broker Market Makers etc.

In 1994 SEBON granted permission to the NEPSE to operate securities market and NEPSE Opens its trading floor and open and competitive securities transaction system was started by Securities Brokers GON, Nepal Rastra Bank, NIDC and Licensed Members are the shareholders of the NEPSE.

### **1.3.1 Office of the Company Registrar (OCR)**

The officer of the Company Registrar (OCR) is the principle administrative body of companies. It was established in 1992 under Companies Act 1964 as a Department of GON under the Ministry of Industry Previous Companies Act, 1997 and prevailing Company Act 2063 has also provision of OCR. OCR is a principle regulatory body of the companies in Nepal.

In the context, it has to play some extent of regulatory role pertaining to securities markets which has clearly expressed in Act. According to this Act, public companies shall have to register their prospectus in the office before publication of prospectus and before registering such prospectus they shall have to obtain approval from SEBON<sup>346</sup>.

### **1.3.2 Nepal Rastra Bank (NRB)**

Nepal Rastra Bank is the central bank of Nepal, which was established in 1956 under Nepal Rastra Bank Act 1956. It is the bank of the bank; it is the principle regulatory body of Bank and Financial Institutions. It has empowered for such regulatory role by Nepal Rastra Bank Act 2002 and BAFIA 2073. As a regulator of Bank of Financial institutions, it has to play some regulatory role of securities of such bank and financial institutions. It is also a regulatory body of Securities markets as per the provision of Nepal Rastra Bank (NRB) Act 2003. NRB shall have to regulate all the activities transactions of BFIs<sup>347</sup>. BFIs shall have to obtain approval before issuance of debenture and financial instrument<sup>348</sup>.

## **1.4 Judicial decision**

### **Rajan Adhikari VS Office of P.M and et.al (D.No 8234)<sup>349</sup>**

The decision regarding how many companies or institutions are to be granted a stock broker license falls under the jurisdiction of the regulatory authority of the business, the Nepal

<sup>346</sup> Companies Act, NEP 2063, Sec 23(3)

<sup>347</sup> Nepal Rastra Bank Act, NEP 2058, Sec 79

<sup>348</sup> Id, Sec 83

<sup>349</sup> Rajan Adhikari VS Office of P.M and et.al(D.No 8234)



Securities Board, and the Nepal Stock Exchange Ltd., which operates and facilitates the market. Therefore, matters related to determining or limiting the number of stock brokers cannot be subject to judicial review.

For the protection and benefit of the general public, decisions regarding which aspects or sectors of enterprise, employment, or economic activities should be regulated and how such regulation should be carried out are made under the laws formulated by the state. These decisions are taken by the regulatory bodies of the concerned sectors or by other authorized bodies with the approval of such regulatory institutions. Hence, the Court cannot intervene in or give its opinion on the legitimacy of any rules, regulations, or directives made for that purpose. As per the Securities Act, 2063, only natural persons who complete the specified procedures and register a company or institution under their name intending to operate as a stock broker can obtain a trading license. Therefore, claiming that the distinction between natural and artificial persons constitutes unequal treatment and violates the fundamental right to pursue any profession, employment, industry, or trade as per Article 12 of the Interim Constitution of Nepal, 2063, is not justifiable.

**Nepal Stock Exchange Limited vs. Commission for Investigation of Abuse of Authority, (NKP 2066) D.N. 8235<sup>350</sup>**

If the law provides for an appeal against a decision made by a public body, no order can be issued that contradicts or affects that decision.

Once the "Stock Broker Recommendation and Selection Procedure" has been formulated and brought into effect, and the implementation process has already begun, the Commission for the Investigation of Abuse of Authority (CIAA) does not have the authority to alter the "selection procedure" or to instruct changes according to its preference under the guise of offering suggestions. Therefore, such decisions and directives are deemed unauthorized and contrary to the law.

Suggestions provided by any individual or entity may assist in reaching a decision, but such suggestions cannot be binding on the decision-making authority.

## **1.5 Conclusion**

The development and expansion of the securities market is vital for Nepal's rapid economic growth and has become a core element of its economic development. A well-regulated and systematically managed securities market requires a strong legal, institutional, and regulatory framework, along with effective policy implementation and good corporate governance practices. However, the study concludes that Nepal's securities market is still underdeveloped and lacks effective regulation. Despite recent improvements through the Securities Act 2063

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<sup>350</sup> Nepal Stock Exchange Limited vs. Commission for Investigation of Abuse of Authority, (NKP 2066) D.N. 8235

and related legislation aimed at addressing legal inadequacies and clarifying regulatory responsibilities the market remains insufficiently regulated due to impractical, contradictory, and incomplete provisions.

Although the current legal and institutional framework, including the role of SEBON, offers a foundation for growth and investor protection, it still falls short of achieving comprehensive regulatory objectives. Effective regulation is hindered by a lack of skilled professionals, inadequate financial and physical resources, and the need for NEPSE to evolve into a self-regulatory organization. While nearing WTO standards, Nepal's securities laws have not fully embraced provisions for foreign direct or portfolio investment as per its trade commitments. To ensure a well-regulated and systematic securities market aligned with global standards, existing laws must be amended to reflect current needs and future commitments. Stronger regulation remains the cornerstone for the future success of Nepal's securities market.

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