



POKHARA
RESEARCH CENTRE

Streamlining Private Firm Registration

A study of Gandaki Province



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Executive Summary

Private firms play a crucial role for individuals to establish and operate their businesses. Private firm registration is a mechanism for ensuring legal recognition and protection of property rights, enabling individuals to safeguard their investments, access financing, and engage in market competition. Thus, encouraging a higher rate of new private firm registration can foster innovation, stimulate competition, and contribute to overall economic growth.

In this context, Gandaki Province Assembly passed its own Private Firm Registration Act, making it a third law of 2078. The purpose of this act is to foster a thriving economy within the province by promoting the economic interests and facilitating the citizens' endeavors in regard to making provisions for the registration and renewal of private firms established to conduct industry, trade, or business. To truly create a business-friendly environment, it is imperative that business registration becomes a seamless formality, eliminating any hindrances to entrepreneurs' engagement in economic activities of their choice. Considering this approach, this Policy brief evaluates the provisions of private firm registration within the Gandaki province, seeking to determine whether existing legal provisions genuinely foster business growth or are mere facade. By examining the registration process and identifying potential obstacles, this brief provides actionable recommendations to enhance the business environment, empowering entrepreneurs and fostering sustained economic progress.

About the Author

Ms. Sampada Pandey is currently pursuing her undergraduate degree in Bachelors in Law at Tribhuvan University. Ms. Sampada holds the position of Research Assistant at Pokhara Research Centre, where she explores the intricacies of the legislative process. She exhibits an interest in advocating for policy reform and actively engages in pioneering research endeavors.

Table of Content

Background	1
Policy Highlights	4
Context of the Problem	5
Detailed review and Recommendations	6
1. Online Registration System	6
2. Recourse to grievances with official decisions	7
3. Time limitations on processing applications	8
4. Renewal time frame	9
5. Necessity of mandating a physical address	10
6. Distinction between the registration of large and of small firms	12
7. Untimely Governmental Interference	13
Reference	15

Background

Nepal's democracy, known for its resilience, experienced a significant upswing in the year 2015 with the successful election of 36,046 legislators at various levels of government. The nation now stands divided into 7 provinces and 753 local governments each empowered with shared and distinct powers and jurisdictions. This multifaceted structure opens up exciting opportunities for effective governance and decentralized decision-making, propelling Nepal towards a more inclusive and Prosperous. Each Province has been granted the authority to formulate its own legislation within the exclusive and concurrent powers outlined in Schedule 6, 7, and 9 by the constitution of Nepal. As a result, the Gandaki Province Assembly passed the Private Firm Registration Act on 24 September, 2021. The objective of this act is to foster a thriving economy within the province by promoting the economic interests and facilitating the endeavours of citizens in establishing and conducting private firms for industry, trade, or business.

The Private Firm Registration Act establishes a regulatory framework aimed at promoting economic prosperity by ensuring that private firms operate within a regulated environment. It mandates the registration of private firms and provides detailed requirements such as firm name, address, objectives, functions, and details of goods or commodities to be transacted. The act also outlines the validity period of the registered private firm and the process for renewal. It addresses procedures for updating the registration authority with any changes in the provided information and specifies conditions under which the registration of a firm may be cancelled. Additionally, it grants discretionary powers to the concerned registration office to impose fines on private firm owners for non-compliance with the act's provisions. To facilitate the implementation of the act, the Gandaki Province introduced the

Private Firm Registration Regulations 2021, which provide a comprehensive procedure and fee structure for registration and renewal.

However, despite the enactment of the Private Firm Registration Act, the current context in Gandaki Province reveals several challenges and obstacles faced by entrepreneurs in formalizing their businesses. Addressing these challenges and establishing an efficient and supportive environment that encourages the establishment and expansion of private firms in Gandaki Province is crucial for fostering economic opportunities and overall prosperity. It is imperative to implement measures that streamline the registration process, remove unnecessary barriers, provide clear guidelines, and incentivize entrepreneurs to formalize their businesses within the province's legal framework. It is crucial to prioritize the resolution of these obstacles for the attainment of economic prosperity in Gandaki Province.

The purpose of business registration, primarily driven by governmental objectives, involves recording information, approving certain activities, and collecting taxes. Registration procedures in developed countries typically require less information from applicants compared to developing countries, with fewer approvals and lower processing fees. Entrepreneurs can fully leverage laws safeguarding property rights and enforcing contracts once they have registered their enterprises, as long as such laws are upheld by the government.

Registration also serves as evidence to third parties, such as banks, of the existence of an enterprise. For the government, registration extends legal status to private sector firms and serves as a source of statistical and tax collection information. However, in Nepal, the existing business registration procedures reflect the characteristics of highly regulated environments where the government is suspicious of private economic activities. The

registration system imposes excessive information and approval burdens, along with high fees. Consequently, a significant portion of economic activity occurs outside the boundaries of the legal system in the informal sector. This system has several consequences: small firms face discrimination in favor of large, well-established enterprises; the government loses revenue and information about the private sector; and complex and time-consuming registration procedures affect the investment choices of economic agents, ultimately impacting economic growth.

Streamlining the registration process and eliminating superfluous barriers will incentivize a greater number of entrepreneurs to formalize their businesses, resulting in enhanced formalization rates, improved tax collection, and more effective resource allocation. This endeavor will cultivate a conducive business environment, stimulate economic activities, attract investments, and generate employment prospects. Furthermore, addressing these obstacles will facilitate inclusive economic growth by empowering local businesses, fostering entrepreneurship, and promoting a fairer distribution of wealth and opportunities. Moreover, it will bolster investor confidence, attracting both domestic and international investments that will propel overall economic development, ultimately benefiting the province and its inhabitants.

Policy Highlights

Following the transition to federalism, the province has been granted the authority to formulate its own legislation within the exclusive and concurrent powers outlined in Schedule 6, 7, and 9 of the constitution. As a result, Gandaki Province Assembly passed its own Private Firm Registration Act, making it a third law of 2021. The purpose of this act is to foster a thriving economy within the province by promoting the economic interests and facilitating the citizens' endeavors in regard to making provisions for the registration and renewal of private firms established to conduct industry, trade, or business.

The main objective of the Act is to promote economic prosperity by ensuring that private firms operate within a regulated framework. It mandates the registration of private firms and requires applicants to provide specific details such as the firm's name, address, objectives, functions, and details of goods or commodities to be transacted. The Act also stipulates the validity period of the registered private firm and outlines the process for renewal. Additionally, it addresses procedures for updating the registration authority with any changes in the provided information. The Act specifies conditions under which the registration of a firm may be canceled by the relevant office. It also grants discretionary powers to concerned registration office to impose fines on private firm owners for non-compliance with the Act's provisions. The provincial government has been authorized to establish regulations, directives, and guidelines for implementing the Act. Accordingly, the Gandaki Province has introduced the Private Firm Registration Regulations 2021, which provide a comprehensive procedure and fee structure for registration and renewal.

Context of the Problem

Private firms are indispensable for maintaining the modern market economy. Encouraging a higher rate of new firm entries can foster innovation, stimulate competition, and contribute to overall economic growth. To promote private sector growth, many countries have focussed on simplifying the registration process, seeking to reduce the costs, days and/or procedures required to formally register a business. (World bank)

Nevertheless, the registration process, outlined by the Gandaki Private Firm Registration Act 2078, for private firms presents significant challenges that discourage entrepreneurs from formalizing their businesses. One primary barrier is the absence of a streamlined online registration procedure/system leading to a cumbersome, time-consuming, and inconvenient registration process. The absence of time limitations in processing applications leads to delays and backlogs, creating opportunities for corruption.

Similarly, the requirement of a physical address for registration may prove impractical or unnecessary for businesses that operate remotely. The short renewal duration is more likely to add financial and procedural burdens to newly established firms. Furthermore, the prevailing perception that registering small enterprises offers no noticeable advantages compared to larger businesses discourages aspiring entrepreneurs. The high financial cost of registration and the lack of effective recourse for applicants further discourage aspiring entrepreneurs. Thus, it is vital to tackle these challenges in order to establish an efficient and supportive environment that promotes the establishment and expansion of private firms. By implementing given actionable recommendations, we can create a streamlined process that encourages entrepreneurial endeavors, thereby fostering economic opportunities and overall prosperity.

Detailed review and Recommendations

1. Online Registration System

Rule 13 of the
Private Firm
Registration
Regulations, 2079

Sub-Rule 1

Registration, renewal, renaming, transfer, cancellation and other necessary arrangements of the private firm can be detailed through the online system done through the online system established by the Ministry.

The Private Firm Registration Act and its accompanying regulations stipulate that private firm registration processes can be conducted online. However, the Act lacks a clear commitment to utilizing the online medium, resulting in a cumbersome, time-consuming, and inconvenient registration process. This shortfall has particularly negative implications for small firms, leading to low registration rates and hindering their inclusion within the government's formal economic system. Consequently, the economic sector faces challenges in effectively capturing small businesses for taxation purposes.

The implementation of an online registration system for private firms provides an accessible interface, eliminating the necessity of visits to government offices and mitigating administrative hurdles, which saves time and money compared to paper-based processes. Moreover, entrepreneurs can also monitor their applications, access information, and receive updates online. Furthermore, integration of these systems with various government systems and platforms, including tax authorities and regulatory bodies, ensure minimal human errors, foster transparency, and coordinated efforts among government bodies.

2. Recourse to grievances with official decisions

Section 11

Sub-Section 6

The person who is not satisfied with the penalty imposed by the concerned Office, may file an appeal to the Secretary of the Ministry within thirty five days from the date of notification.

The Act grants authority to the head of the concerned registration office within the Ministry to impose penalties on individuals operating unregistered firms or providing false information during firm registration. However, the provision for appealing such penalties within 35 days before the secretary of the Ministry restricts the right to a fair and impartial appeal. This contradicts the fundamental principle of justice, as the same authority responsible for imposing penalties also adjudicates on appeals. Consequently, this provision undermines the judiciary's ability to review executive actions.

In order to correct this legislative shortfall and establish a mechanism for redress in cases of non-compliance by government bodies, it is required to transfer the authority to hear appeals to the Court of Appeal from the secretary of the Ministry. This shift will not only strengthen the judiciary's power to review executive and administrative actions, but also uphold the principles of separation of powers and checks and balances.

3. Time limitations on processing applications

Section 4

Sub-Section 3

After submission of an application for registration, the concerned Office shall hold an inquiry into the application and if it finds reasonable to register a private firm, it shall register as prescribed and issue a certificate in such format as prescribed.

The act gives the concerned Office authority to register the private firm upon receiving the application, if the office finds reasonable to register a private firm upon holding an inquiry into the application. However, the act fails to impose time limitations on processing applications. As a result, there are delays and a backlog in processing applications, which makes it difficult for applicants to plan their activities, such as securing funding, hiring employees, or scheduling launch events. Moreover, the absence of time limitations is likely to result in unfair advantages for certain applicants, as all applications are not subjected to the same review process.

Time limitation should be introduced to enhance efficiency of the registration system. This will not only give applicants with ideas of their application being processed and evaluated, giving them ability to plan their operation and initiate accordingly, it also helps to build public trust and confidence in the process. Thus, it is essential to have time limitation as to maintain transparent, fair, accurate, comprehensive and compliant application reviewing process

4. Renewal timeframe

Section 5

Sub-Section 1

The private firm registered under this act, shall be renewed every two years paying the prescribed fee for renewal.

The certificate of a firm registered under the Act and regulations is valid for a period of two years, necessitating renewal within this time frame. However, the duration of two years is perceived as relatively short, particularly for newly established firms. These businesses, particularly those owned by a single individual, often face financial challenges, tax obligations, and other procedural hurdles during their probationary period. The additional burden of renewal fees and a lengthy renewal process further worsen the hassle on these firms. Consequently, this situation discourages firm owners from registering their businesses, resulting in an environment that is not conducive to business-friendly practices.

Following federal regulations in private firm registration and regulations in other provinces, it is recommended that the initial validity period of a firm's registration certificate should be set at a minimum of five years, with subsequent shorter renewal period. By implementing this initiative, we can effectively reduce the additional financial burden and administrative complexities associated with frequent renewals for newly registered and operating firms.

5. Necessity of mandating a physical address

Section 4

Sub-Section 1

A person who intends to register a private firm may submit an application to the concerned Office, setting out the following particulars: (a) The name and the address of the Private Firm.

As per the Act, individuals seeking to officially register their private firms are mandated to include the address of the firm in the application submitted to the concerned registration Authority. Typically, the registration process for private firms necessitates the provision of a physical address for purposes pertaining to legality and administration. Nevertheless, there are considerations that question the necessity of mandating a physical address. In the era of digital advancements, an increasing number of firms operate exclusively online, without a physical establishment, for these virtual businesses, requiring a physical address may prove impractical or unnecessary, as their operations are conducted remotely. Furthermore, certain enterprises, particularly startups, freelancers, and mobile businesses such as food trucks or grocery delivery services, may lack a fixed physical location. These entities might operate from shared work spaces, home offices, or engage in constant movement. Imposing a physical address requirement in such cases could present challenges and hinder their operational flexibility.

It is recommended to introduce an amendment that provides a flexible option instead of making a physical address requirement mandatory during the registration process. This would alleviate the impractical and unnecessary burden faced by businesses operating remotely, allowing them greater

flexibility. To address administrative and legal needs such as taxation, it is advisable to adopt online verification tools that can authenticate individuals and businesses through digital documents, identification numbers, and other digital data points, eliminating the necessity of a physical address. Implementing an online registration process is likely to further facilitate this transition.

6. Distinction between the registration of large and small firms

The regulations governing the registration of private firms in Gandaki Province have classified private firms solely based on their capital, which is also used as a basis for determining registration and renewal fees. However, neither the Act nor its accompanying Regulations consider other factors to distinguish between large and small firms. As a result, there is no differentiation in the registration process between large enterprises and small businesses. This lack of distinction hinders lawmakers from tailoring policies that effectively address the unique characteristics and requirements of each category. Small businesses, for instance, may require simpler compliance procedures to reduce administrative and financial burdens, but bigger ones may require stringent standards to maintain accountability and transparent governance.

In this vein, it is essential to establish a clear distinction between the registration processes of large firms and small firms. This differentiation can be based on factors such as resource allocation, economic impact, and risk analysis. By recognizing these distinctions, it becomes possible to design financial assistance and incentives policies that specifically cater to the needs of small firms, supporting their sustainability and growth. Similarly, policies focussed on promoting innovation and research can be implemented to address the threats and opportunities faced by large firms. Considering that large firms often have a significant impact on the economy, introducing policies that address employment generation and tax contributions can add to the distinguishing factors. Furthermore, establishing different compliance and monitoring regulations can serve as a fair demarcation among the various firm categories.

7. Untimely Governmental Interference

Section 4	Sub-Section 1 (d)	A person who intends to register a private firm may submit an application to the concerned Office, setting out the following particulars: (d) Other details as prescribed by the Ministry.
Section 4	Sub-Section 5	If additional details or documents are deemed necessary while examining the application for registration, such details or documents may be requested.
Section 7	Sub-Section 1	The registration office may request necessary details to the private firm registered under this Act.

Although the Act and its regulations require the submission of additional details or documents as requested by the Ministry or registration office, they do not specifically outline the documents that are likely to be required. This lack of clarity in the provision opens the door for potential favoritism and unfair disadvantages in the application process. Consequently, this ambiguity results in lengthy processing times and unnecessary complications for registration and operation. It is important to address this issue by providing clear guidelines on the expected documents, thereby promoting transparency, fairness, and efficiency in the registration process.

In order to resolve this issue, it is recommended that the act be supplemented with schedules that provide a comprehensive list of potential documents required for the assessment of firm registration and operation. The purpose of these schedules is to create a consolidated documentation of the requirements, ensuring that all the necessary documents and details are

coordinated and clearly stated for a smooth registration process.

It is recommended to introduce an amendment that provides a flexible option instead of making a physical address requirement mandatory during the registration process. This would alleviate the impractical and unnecessary burden faced by businesses operating remotely, allowing them greater

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About Pokhara Research Centre (PRC)

Pokhara Research Centre (PRC) is a research-based non-partisan organization based in Pokhara. Established in 2019, PRC focuses on socioeconomic dimensions of domestic public policy research.

Guided by the motto of "*Economic Freedom with Good Governance*", PRC is following the international principle of individual choice and liberty translated into the equal opportunity of enterprise, rule of law, and the democratic principle of free expression as a tool to design its programs and initiatives; creating positive impact at the province level, through policy reform; PRC works under three broad functional domains; Research, Training, and Advocacy.

PRC's one of flagship program Youth in Policy and Governance Fellowship Programme (YPG Fellowship) aims to train the youth of Gandaki Province in law-making and public policy. The primary role of a PPSF Fellow is to deliver extensive research support to their assigned MP for their parliamentary work. The organization is also focusing on other youth training programs on the free market, entrepreneurship, and economic freedom in the region supported by Atlas.

The organization's core values are; Creating public values, Evidence-based policy-making, and the investment approach to public service delivery. PRC intervenes in areas viz. Enterprise Development, Economic Policy Reform, Governance & Advocacy, and Public Policy Delivery.

The organization has launched programs such as Gandaki Discourse, Political Economic Discussion Series (PEDS), and Formation of Gandaki Leader Circle (GLC) dedicating it to establishing itself as a state-level policy think tank.

Further, PRC is the partner of Atlas Network, Centre for International Private Enterprise, National Endowment for Democracy, United States Embassy in Kathmandu, Samriddhi Foundation, Hriti Foundation, and Bikalpa an Alternative.



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