

**Proceeds and Instrumentalities of Offence (Freezing, Controlling and
Confiscation) Regulation, 2021**

The Government of Nepal has, in exercise of the power conferred by Section 40 of the Proceeds and Instrumentalities of Offence (Freezing, Controlling and Confiscation) Act, 2013, framed the following Rules:-

Chapter-1

Preliminary

1. **Short Title and Commencement:** (1) This Regulation may be cited as “(the) Proceeds and Instrumentalities of Offence (Freezing, Controlling and Confiscation) Regulation.”
(2) This Regulation shall come into force at once.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Regulation,-
 - (a) “Act” means the Proceeds and Instrumentalities of Offence (Freezing, Controlling and Confiscation) Act, 2013.
 - (b) “Proceeds or instrumentality of offence” means the proceeds of an offence or instrumentality related to the offence.
 - (c) “Office” means the District Administration Office of the districts other than that of Kathmandu, Bhaktapur and Lalitpur District.

Chapter-2

Freezing and Control of Proceeds or Instrumentality

3. **Search of Proceeds or Instrumentality of Offence:** (1) The investigating authority shall, in the course of inquiry and investigation, search for any property or instrumentality if a person is found to possess proceeds or instrumentality of an offence or he or she has reasonable grounds for suspecting that such proceeds or instrumentality has been kept hidden by any agency, organization or person.

(2) In the course of conducting a search pursuant to Sub-Rule (1), the investigating authority may interrogate, take statements, search the premises and seize the property so acquired having complied with the procedures in accordance with prevailing laws.

4. **Detection of Proceeds or Instrumentality of Offence:** (1) If any property or instrumentality is found while conducting a search of any property or instrumentality pursuant to Rule 3, the investigating authority shall ascertain and detect whether or not the property or instrumentality found is proceeds or an instrumentality of an offence.

(2) The investigation authority may take the following basis into account while ascertaining whether or not the property or instrumentality is the proceeds or instrumentality of an offence: -

- (a) If inventory of such property or instrumentality is kept by a government agency or by any other agency, such inventory;

- (b) The basis and source of acquisition of such property or instrumentality;
- (c) The circumstances in which such property or instrumentality was acquired;
- (d) Other grounds deemed necessary by the investigating authority.

5. **To freeze or take control:** The investigating authority shall immediately freeze or take control of the property or instrumentality detected pursuant to Rule 4 in such a manner that no one would be able to use and transfer the title or ownership pursuant to Section 4 of the Act.

6. **Valuation to be carried out:** (1) The investigating authority shall carry out valuation of the property or instrumentality which has been frozen or taken under control pursuant to Rule 5 on the basis referred to in Sub-section (1) of Section 19 of the Act and shall keep a record thereof stating the price.

(2) While determining the price pursuant to Sub-Rule (1), the price shall be determined by taking into consideration the quality, period and condition of use of such property or instrumentality.

7. **Assistance may be sought:** While carrying out search of proceeds of offence or instrumentalities, while freezing or taking control of such proceeds or instrumentalities or while determining the value of such proceeds or instrumentalities, the investigating authority may seek necessary assistance from any government agency, local level, organization or person as required.

(2) It shall be the duty of the relevant government agency, local level, organization or individual to provide necessary assistance if requested pursuant to Sub-Rule (1).

8. **Details to be forwarded:** The investigating authority shall forward details of the property or instrumentality, frozen or controlled in the course of inquiry and investigation into an offence pursuant to Rule 5 to the Office or Department in the format prescribed in Schedule-1.

(2) After receiving the details from the investigating authority pursuant to Sub-Rule (1), the Office shall keep a record and forward such details to the Department every month.

(3) The Office shall forward the details of the foreign currency, negotiable instruments or precious metals or objects deposited in the bank pursuant to Section 6 of the Act, and the details of the amount deposited in the deposit account pursuant to Section 7 of the Act to the Department every month, in the format prescribed in Schedule-2.

(4) The details pursuant to this Rule may also be sent via electronic means.

Chapter-3

Auction, Use and Disposal of the Property or Instrumentality

9. **Security to be deposited:** A person willing to participate in the auction of property or instrumentality confiscated in accordance with the Act shall deposit twenty percent of the amount determined after the valuation of such

property or instrumentality pursuant to Section 18 of the Act in the deposit account specified by the Department or Office.

- 10. To forward details of Auction:** (1) The Department or Office shall forward the details of auctioned property or instrumentalities to the relevant Court within seven days of the auction pursuant to section 21 of the Act in the format prescribed in Schedule-3.

(2) The Office shall also provide written information to the Department about the details forwarded to the Court pursuant to the Sub-Rule (1).

(3) The record of the details pursuant to Sub-Rules (1) and (2) shall be kept by the Department.

- 11. Property or Instrumentality may be used:** (1) The property or instrumentality which has been frozen or taken under control in accordance with the Act and this Regulation shall be kept safe by the investigating authority in a way that there incurs no loss or damage of any type.

(2) If it seems that income may be generated from the property or instrumentality that has been frozen or taken under control in accordance with the Act and this Regulation, the Department may, in accordance with the prevailing law regarding lease of government property, by entering into a contract with the interested person or organization, rent out or lease such property or instrumentality; or if there is any cultivable land, may provide for cultivation; or use or manage or caused to be managed in any other work from which income may be generated.

(3) If any income is generated while using the property or instrumentality pursuant to Sub-Rule (2), the remaining amount after deduction of the operating expenses shall be deposited in the deposit account pursuant to Section 7 of the Act.

12. Property or Instrumentality to be disposed: (1) Among the properties or instrumentalities taken under control pursuant to Section 11 of the Act, the Department or Office may dispose the property or instrumentality those which could not be auctioned pursuant to Sub-Section (8) of Section 20 of the Act, those which should not be brought into usage and thus should be disposed in view of public interest or public health, those which are required to be disposed by the prevailing laws and those property or instrumentalities which are of perishable nature.

(2) While disposing the property or instrumentality pursuant to Sub-Rule (1), if it is to be disposed by the Department, the disposal shall be carried out in the presence of representatives of the Office of Attorney General, of the Comptroller General Office and of the Police Headquarters and if it is to be disposed by the Office, the disposal shall be carried out in the presence of a representative of the concerned Government Attorney Office, of the Treasury and Accounts Controller Office and the District Police Office.

(3) Notwithstanding anything contained in Sub-Rule (1), if any part of such property or instrumentality may be reused or auctioned, such part shall be separated and only the remaining part shall be disposed.

(4) Before disposing of any property or instrumentality pursuant to Sub-Rule (1) or (3), a deed of cognizance stating the name, quantity,

estimated value of property or instrumentality, owner of such property or instrumentality or the source and date of acquisition of such property or instrumentality shall be prepared and kept.

(5) A copy of the deed of cognizance prepared pursuant to Sub-Rule (4) shall be sent to the concerned Court in case of the Department and to the Department including the concerned Court in the case of the Office.

- 13. To be retained in name of Government of Nepal:** (1) The Department or Office shall send in writing to the concerned body to retain in the name of the Government of Nepal the property which was decided to be confiscated pursuant to Section 11 and could not be sold in auction pursuant to Section 20 of the Act or the immovable property which has been decided to be used by the Government of Nepal pursuant to Sub-Section (2) of the Section 17 of the Act.

(2) If a correspondence referred to in Sub-Rule (1) is received, the concerned body shall retain such property in the name of the Government of Nepal and shall inform the Department and Office about the same.

Chapter-4

Miscellaneous

- 14. Other Functions, Duties and Powers of Department:** In addition to the functions, duties and powers referred to elsewhere in the Act and this Regulation, the other functions, duties and powers of the Department shall be as follows:-

- (a) Subject to Section 24 of the Act, to prepare necessary program regarding the use of amount of the Fund and to submit it to the Committee for approval;
- (b) To monitor and inspect every now and then in regard to the protection of property or instrumentality frozen or taken under control in the course of the investigation and inquiry of offences;
- (c) To issue necessary instructions to the Office or other body regarding the management of the property or instrumentality frozen or taken under control;
- (d) To make necessary coordination with the investigating authority regarding the freezing, control or confiscation of proceeds of offence or instrumentalities.

15. **Use of Fund:** (1) Programs shall be made to be approved by the committee prior to the use of amount of the Fund.

(2) Without the approval of the committee, no programs shall be formulated in a way to spend Funds and no Fund shall be spent.

16. **Operation of Deposit Account:** The deposit account referred to in Section 15 of the Act shall be operated by the joint signature either of the head of the Department or any Officer-level employee of the Department designated by the head and the head of the financial administration Section.

17. **Return of Security:** (1) If the amount acquired from the property or instrumentality is deposited in the deposit account pursuant to section 7 of

the Act and there is a final decision by the Court that such property or instrumentality is not the proceeds of an offence or instrumentality, such amount shall be returned to the concerned owner.

(2) To withdraw the amount deposited in the deposit account pursuant to Sub-Rule (1), the concerned owner shall submit an application along with a copy of the judgment to the Department in case of Kathmandu, Lalitpur and Bhaktapur districts and to the Office in case of other districts within six months from the date of receiving the information of the judgment.

(3) If an application is received pursuant to Sub-Rule (2), the Department or the Office shall, if finds that the amount should be returned to such person after carrying out necessary inquiry in that regard, return such amount to the person having drawn a receipt.

(4) If there is no application for refund within the period stipulated in Sub-Rule (2), such amount and the amount deposited in the deposit account for the property or instrumentality which is determined to be confiscated by the final judgment of the Court shall be deposited in the Fund by the Department or Office.

18. **Other Functions, Duties and Powers of Committee:** In addition to the functions, duties and powers mentioned in Section 26 of the Act, other functions, duties and powers of the committee shall be as follows:-

(a) To issue necessary instructions to the Department regarding the management and use of property or instrumentalities confiscated as per the order of the Court;

(b) To approve the programs submitted by the Department regarding the use of Funds.

19. **Alterations may be made to schedule:** The Ministry may make necessary alterations to the Schedules having published a notice in the Nepal Gazette.

Schedule-1

(Relating to Sub-Rule (1) of Rule 8)

Details of Property or Instrumentalities Frozen or Controlled

S.N.	Details of the property or instrumentalities	Quantity (according to the nature of property or instrumentalities)	Name, Surname and address of the owner of the property or instrumentalities or of the person from whom it was acquired	Estimated value of the Property or instrumentalities (in Rupees)	State of property or instrumentalities when acquired	Remarks

Description filled by: -

Name, Surname:

Designation:

Signature:

Date

Description certified by: -

Name, Surname:

Designation:

Signature:

Date:

Schedule-2

(Relating to Sub-Rule (3) of Rule 8)

Details of Foreign currency, Negotiable instruments or precious metals or objects deposited in Bank

S.N.	Details of the foreign currency deposited in the bank	Details of the negotiable instruments	Details of the precious metals/objects	Name, surname, address of the owner of the foreign currency/negotiable instruments/precious metals/objects or of the person from whom it was acquired	State of negotiable instruments/precious metals/objects when acquired	Remarks

Description filled by, -

Name, Surname:

Designation:

Signature:

Date:

Description certified by, -

Name, Surname:

Designation:

Signature:

Date:

Schedule-3

(Relating to Sub-Rule (1) of Rule 10)

Details of Auctioned Property or Instrumentalities

S.N.	Details of the property or instrumentalities	Quantity (according to the nature of property or instrumentalities)	Date of confiscation and the Court which ordered for confiscation	Amount received from auction (in Rupees)	Name of the person or company accepting auction	Name and address of the Bank with deposit account	Date in which the amount was credited in the deposit account	Remarks

Description filled by:-

Name, Surname:

Designation:

Signature:

Date:

Description certified by:-

Name, Surname:

Designation:

Signature:

Date: