

An Act To Make Provision Relating To Industrial Enterprises

Preamble :

Whereas it is expedient to create employment opportunities by creating a congenial environment for industrial investment for the speedy economic development of the country, to increase the productivity, to encourage the private sector and to maintain the welfare and economic interest of the people in general.

Now, therefore, His Majesty King Birendra Bir Bikram Shah Dev has made this Act on the advice and with the consent of the National Panchayat.

1. Short Title and Commencement :

- (1) This Act is called the "Industrial Enterprises Act 2038."
- (2) It shall come into force at once.

2. Definitions :

In this Act, unless the subject or context otherwise requires.

- (a) "Industry" means any enterprise as mentioned under clause (9).
- (b) "Cottage Industry" means an enterprise in which investment in machinery, equipment and tools does

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not exceed Rs. 200,000 in value and in which fixed assets do not exceed Rs. 500,000 in case of rural and Rs. 800,000 in case of urban areas.

(c) "Small Industry" means an enterprise in which investment in machinery, equipment and tools exceeds Rs. 200,000 in value and in which fixed assets do not exceed Rs. 2 million.

(d) "Medium Industry" means an enterprise in which fixed assets investment exceeds Rs. 2 million, but does not exceed Rs. 10 million.

(e) "Large Industry" means an enterprise in which investment in fixed assets exceeds Rs. 10 million.

(f) "Fixed assets comprise the land owned by the enterprise, land development costs (filling, boundary walls), on-site physical infrastructures (drainage, sewerage, internal roads), buildings, residential quarters, machinery, equipment and tools, transportation vehicles essential for the operation of the enterprise, electrification, furniture & fixtures, office equipment, water and telephone distribution system, pre-investment and preoperational expenses capitalised, engineering consultancy and supervision and interest costs during construction.

Provided that fixed assets of a cottage enterprise shall include only such machinery, equipment, tools and premises which are either owned or taken on rent by the enterprise.

(g) "Board" means the Industrial Promotion Board constituted under Clause (7).

(h) "Operation Date" means the date from which the concerned enterprise either starts its operation or provides its services.

(i) "Value added" means the ratio of net domestic annual operating costs and expenses (left after deducting all foreign costs such as imported raw materials, auxiliary raw materials, chemicals, wages, remuneration, consultancy fee, royalty, depreciation of the imported assets) to the total annual operating costs and expenses.

(j) "Export Promotion Area" means the area allocated for such enterprises whose products would have over 20% value added and which would be exported entirely.

(k) "Tourism Area" means the area designated by His Majesty's Government in a notification published in the Nepal Gazette.

(l) "Underdeveloped Area" means the area designated by His Majesty's Government in a notification published in the Nepal Gazette.

(m) "Concerned Department" means the Department of Industry or the Department of Cottage and Village Industry of His Majesty's Government or any other Department or office designated by His Majesty's Government.

(n) "Designated" or "as designated" means designated or as designated in the rules made under this Act.

3. *Permission to establish an enterprise:*

Anyone desirous to establish an enterprise under this Act shall be required to obtain permission from the concerned Department.

However, permission shall not be required to establish such cottage enterprises except those designated by His Majesty's Government by a notification published in the Nepal Gazette.

4. *Order of preference in granting permission for the establishment of an enterprise:*

While granting permission for the establishment of the following enterprises, preference shall be given to the following firm, institution or company established under the prevailing law:

- (a) To any private firm, partnership firm, institution or company for the establishment of a cottage enterprise as may be designated by His Majesty's Government by a notification published in the Nepal Gazette.
- (b) To any partnership firm, institution or company for the establishment of a small enterprise.
- (c) To any company for the establishment of medium and large enterprises.

5. *Granting of Permission:*

The Department of Industry may grant permission for the establishment of small, medium or large enterprises and the Department of Cottage and Village Industry for the establishment of such cottage enterprises as designated by His Majesty's Government by a notification published in the Nepal Gazette.

However, the Department of Industry shall grant permission for the establishment of medium and large enterprises on the basis of recommendations of the Board.

6. *Restriction in the establishment of defence enterprises:*

Notwithstanding anything contained in other clauses of this Act, His Majesty's Government alone shall be entitled to establish defence enterprises to produce such items as armaments, ammunitions or explosives.

7. *Organisation, functions, duties and rights of the Board:*

(1) His Majesty's Government shall constitute an Industrial Promotion Board by a notification published in the Nepal Gazette.

(2) The functions, duties and rights of the Board shall be as follows:

- (a) To make recommendations for the establishment of medium or large enterprises in accordance to the policies of His Majesty's Government and the prevailing law.
 - (b) To make necessary arrangements to provide effectively, the incentives and facilities laid down in this Act.
 - (c) To appoint sub-committees to represent appropriate agencies concerned with entrepreneurship and industrial promotion.
 - (d) To review the industrial policy every five years.
8. *Restriction in the establishment of industrial enterprises near the international boundary:*
- (1) Industrial enterprises shall not be established within

eight kilometres of the international boundary, irrespective of whether such enterprises may or may not require permission for the establishment under this Act or any other prevailing law.

(2) Notwithstanding anything contained in sub-clause the following may be established within eight kilometres of the international boundary:

- (a) Cottage Industry.
- (b) Industrial enterprises established in the Industrial Districts owned by His Majesty's Government or established with the approval of His Majesty's Government.
- (c) Tourism Industry.
- (d) Service Industry.
- (e) Recreation Industry.

However, His Majesty's Government may impose the restriction of sub-clause (1) relating to the establishment of the above mentioned industries, if the situation so warrants.

Classification of Industry:

(1) For the purpose of this Act, industries are classified as follows:

(a) *Manufacturing Industry:*

The following industries which use, reuse, process raw materials, semi processed materials or by-products or waste materials.

(1) *Essential Consumer Goods Industry :*

One which engages in the production of food stuffs, viz rice, pulses, flour, oil, sugar including open pan sugar, milk, ghee, dairy products, loaf, biscuit, tea, textiles, footwear, soap, matches, paper, pens and pencil, ink, stationery goods as well as pharmaceuticals and cotton ginning and spinning.

(2) *Any Other Manufacturing Industry :*

(b) *Energy based Industry :*

One which engages in harnessing energy from water resources, solar source, coal, natural oil and gas, biogas and other sources.

(c) *Agro-based special Industry :*

Comprises animal husbandry, poultry, pisciculture, bee keeping, sericulture, dairy farm and such others designated by His Majesty's Government under this category.

(d) *Mining and mineral Processing Industry :*

(e) *Tourism Industry :*

Comprises tourist cottage, tourist lodge, motel, hotel, restaurant and bar of tourist standerd, trekking, travel agency, skiing, rafting, cable car complex and special types of recreational enterprises directly supporting and assisting the promotion of tourism.

(f) *Service Industry :*

Comprises such enterprises as :

- 1, Public transportation (trucking, bus service,

ropeway, tram-way, trolley buses, water transportation.)

2. Construction (civil, mechanical, electrical and plumbing workshops equipped with machinery and equipment, drilling and boring operations to extract underground water, etc.)
3. Cold storage, large warehouse, rental apartment.
4. Machinework, workshop and repair shop.
5. Printing press.
6. Industrial consultancy services.
7. Hospital, nursing home, and X-Ray clinic.
8. Packing, baling and ginning enterprise.
9. Photography.

10. Other enterprises designated as Service Industry by His Majesty's Government.

(g) *Recreational Industry* :

1. Cultural theatre.
2. Motion picture production enterprise.
3. Circus.

(h) *Assembly Industry* :

1. One which produces and use goods by putting together and assembling various parts and components.
2. His Majesty's Government shall designate the classification of any industry which falls under more than one classification mentioned under sub-clause (1) or does not fall under any one of the above classifications.

10. *Facilities, Concessions and Protection to be granted to the Industries* :

Notwithstanding anything contained in the prevailing law the following facilities, concessions and protection shall be granted to the enterprise to be established under this Act :

(a) *Income Tax Concession* :

- (1) Cottage industrial enterprise classified under manufacturing shall be granted cent percent tax exemption for a period of six years starting from the date of operation.

Provided that,

(1) Those cottage industrial enterprises shall not be entitled to such exemption if His Majesty's Government has, by a notification published in the Nepal Gazette, debarred such enterprises from such concession.

- (2) Enterprises entitled to the concession pursuant to sub-clause (1) shall continue obtaining such concession throughout the entire period.

(2) Manufacturing industrial enterprises, small, medium or large, shall be granted cent percent income tax exemption starting from the date of operation, as follows :

- (a) For five years if the value added is between 20% and 50%.

(d) Additional one year's exemption for every

10% increase in the value added above 50%.

- (3) Industrial enterprises producing essential consumer goods shall be granted two year's exemption in addition to the period of exemption mentioned in sub-clause (1) and (2).
- (4) Energy based and mining and mineral processing enterprises shall be granted cent percent income tax exemption for a period of six years starting from the date of operation.

Provided that such enterprises having more than 25% value added will enjoy an additional six year's tax holiday.

- (5) Tourism enterprises shall be granted cent percent tax exemption starting from the date of operation, as follows :

- (a) Seven years for those to be established in the tourism area.
- (b) Five years for those to be established in other areas.

- (6) Service enterprise like workshops equipped with semi-automatic or automatic machinery (lathe, shaping, milling etc.) to produce parts, components, tools or end-use products, cold storage, trolley bus as well as large warehouses, hospitals x-ray clinics, large rental apartments, printing presses and water transport designated by His Majesty's Government shall be granted cent percent tax exemption for three years starting from

the date of operation. Other service enterprises shall not be granted exemption.

- (7) Enterprises established in the Export Promotion Area shall be granted cent percent tax holiday for ten years starting from the date of operation, followed by 50% rebate on income tax for the next five years.

- (8) Agro-based special enterprises shall be granted cent percent tax exemption for a period of ten years starting from the date of operation.

- (9) Enterprises located in the Under-developed Area shall be granted cent percent income tax for three years in addition to those enjoyed by similar enterprises established elsewhere.

- (10) An enterprise which expands its installed capacity by over 50% may deduct, at a time or at different times within seven years, an amount equal to 15% of the additional new fixed assets from the income tax payable.

- (11) Enterprises which export over 25% of their annual production shall be granted 15% exemption on the amount of income tax payable that year and, similarly, 25% exemption shall be granted if the export exceeds 50% of the annual production.

- (12) Expense incurred on training recognised by the Department of Labour, His Majesty's Government with a view to providing employment for and upgarding the skill of Nepalese workers

will be regarded as an item of the annual operating expenses and as such, this expense is deductible from the income tax payable.

Provided that such deduction shall not exceed 1% of the annual sales revenue of the enterprises.

(b) Customs duty facilities:

(1) Import duty at the rate of only 1% shall be levied on (a) machinery, equipment and tools to be used directly in the construction and operation of an enterprises (b) mining and related conveying equipment and (c) spare parts. The entitlement of an enterprise to total exemption or to a rate below 1% shall not be affected by this clause.

(2) Import duty of 1% shall be levied on raw materials, auxiliary raw materials and chemicals to be used directly in the production, mixing, blending and processing operations of enterprises other than those designated by His Majesty's Government by a notification published in the Nepal Gazette. The entitlement of an enterprise to total exemption or to a rate below 1% shall not be effective by this clause.

Provided that the raw materials, auxiliary raw materials, chemicals, machinery or parts and components are readily available in adequate quantities within the country, a minimum of 15% import duty shall be levied on these

items, and if necessary, His Majesty's Government may impose restrictions on their imports tools.

(3) Items mentioned in sub-cause (1) and (2) if imported for industrial uses by HMG, semigovernment agencies, cooperatives or by the designated public limited companies shall be subject to the import duty as mentioned in the above sub-clauses.

(4) 1% import duty shall be levied on such items to be used directly by tourism enterprises as may be designated by His Majesty's Government by a notification published in the Nepal Gazette.

(5) Assembly enterprises which are established outside the Export Promotion Area and whose products have more than 20% value added, shall pay 25% less than the rate of duty normally applicable on the parts and components imported, provided that imports are for their own manufacturing operations.

(6) Enterprises established in the Export Promotion Area shall be liable for only 1% import duty on machinery, equipment and tools, spare parts and components to be used directly in the construction and production as well as on the raw materials, auxiliary raw material and chemicals to be used directly in the production, mixing, blending and processing operations.

(7) Export duty shall not be levied on the export of the products of enterprises except the designated products.

(8) Manufacturers who have previously paid more than 1% import duty on raw materials, auxiliary raw materials and chemicals, will be refunded to the extent in excess of 1% on the quantity of these materials used in the manufacture of the goods exported.

(c) *Excise duty facilities :*

(1) Cottage enterprises shall be exempted from excise duty for five years starting from the date of operation.

(2) Small, medium and large enterprises shall be exempted from excise duty for three years starting from the date of operation.

(3) Enterprises established in the Under developed Area shall be exempted from excise duty for five years in addition to the period applicable for similar enterprises established elsewhere.

(4) Notwithstanding anything contained in sub-clauses (1), (2) and (3), excise duty exemption shall not be granted to the enterprises designated by His Majesty's Government by a notification published in the Nepal Gazette.

Provided that, the enterprise entitled to exemption under sub-clauses (1), (2) and (3) shall enjoy such exemption during the entire stipulated period.

(5) Domestically manufactured goods supplied to the enterprises established in the Export Promotion Area or exported to foreign countries shall be entitled to refund of the excise duty.

(6) Excise duty shall be waived totally on products manufactured within the Export Promotion Area.

(7) Enterprises shall be exempted from paying excise duty on raw materials, auxiliary raw materials or chemicals to the extent used in the manufacture of products subject to the excise duty.

(d) *Sales tax facilities :*

[1] Sales tax shall not be levied on the products of cottage industry.

(2) Notwithstanding anything contained in sub-clause (1), sales tax exemption shall not be granted on the products of such cottage enterprises as may be designated by His Majesty's Government by a notification published in the Nepal Gazette.

Provided that the cottage enterprises entitled to exemption under sub-clause (1) shall enjoy such exemption during the stipulated period.

(3) Sales tax shall not be levied on the import of (a) machinery, equipment and tools to be used directly in the construction and production of an enterprise (b) mining and related conveying equipment and (c) spare parts.

(4) Sale tax shall not be levied on the import of raw materials, auxiliary raw materials and chemicals to be used directly in the production, mixing, blending and processing by the enterprises other than those designated by His Majesty's Government by a notification published in the Nepal Gazette.

(5) Enterprises shall be exempted from paying sales tax on raw materials, auxiliary raw materials or semi-processed materials to the extent used in the manufacture of products subject to sales tax.

(6) Sales tax shall not be levied on the domestically manufactured products if supplied to the Export Promotion Area or exported to foreign countries.

(e) *Convertible Foreign Exchange Facilities :*

Convertible foreign exchange facility shall be provided to the necessary extent for importing machinery, equipment and tools, spare parts and components, raw materials, auxiliary raw materials and chemicals required for the operation of an enterprise and for technical consultancy, technical assistance, service fee, management fee, patent fee, industrial promotion, market studies, sales promotion etc.

Provided that enterprises requesting for the convertible foreign exchange facility for the import of raw materials, auxiliary raw materials and chemicals, shall have to submit the details including the

annual requirement of such materials, the quantity of such materials imported, the quantity utilised, the quantity produced as well as the amount of revenue paid to His Majesty's Government in the preceding year.

(f) Enterprises providing designated employment opportunities to the handicapped shall be granted additional designated facilities.

(g) *Concessions on electricity charges :*

- (1) Royalty shall not be charged on the electric power generated by an enterprise for its own use.
- (2) An enterprise generating electric power for public supply shall be charged only on the units of power actually distributed.

(h) *Concession on Interest rates :*

Enterprises established or to be established in the Underdeveloped Area with the loan granted by any financial institution having full or majority ownership of His Majesty's Government shall be charged interest at a two percent lower rate than applicable to other enterprises established elsewhere.

(i) *Depreciation Facilities :*

(1) For the purpose of depreciation, the life of the fixed asset has been determined as follows :

- (a) All types of buildings, drainage, sewerage, water distribution systems, etc twenty years
- (b) All types of machinery, equipment and tools ten years

- (c) Transportation vehicles, furniture and fixtures, office equipment five years
- (d) Any other fixed assets not categorized above ten years

(2) Enterprises shall be entitled to depreciate the fixed assets on either straight line method or on an accelerated basis.

(j) *Other Facilities :*

[1] The capitalised pre-investment and preoperational expenses may be amortized over a period of ten years from the date of operation of an enterprise.

(2) Enterprises utilizing used machinery and equipment shall be entitled to establish their costs at the prevailing market value.

(3) Relating to cottage enterprises, the cost of transformer and generator shall be excluded in computing the investment on the machinery, equipment and tools.

(k) *Protection :*

(1) His Majesty's Government may provide protection to an enterprise by means of quantitative or full restriction on imports or by imposing higher tariffs on imported goods throughout the country or on a regional basis, in the light of financial position, production capacity, product qualities and the price competitiveness of that enterprise.

(2) If an enterprise competes successfully in an international bidding process and sells its products within the kingdom, such a sale shall be treated as exported to foreign countries, and shall enjoy all the facilities and concessions accordingly.

11. *Industrial enterprises not to be nationalised :*

Enterprises shall not be nationalised. Provided that, in case of nationalization under special circumstances, compensation shall be paid based on just evaluation.

12. *Industrial manpower :*

(1) Necessary manpower required for an enterprise shall have to be employed from among the Nepalese citizens.

(2) Notwithstanding anything contained in sub-clause

(1), foreigners may be employed in an enterprise for a maximum period of seven years with the prior approval of the Department of Labour if such employment is essential for the operation of the enterprise. Any foreigner so employed may be re-appointed for an additional period of five years with the prior approval of the Department of Labour if such a person is a technician of special skill not available within Nepal.

(3) Foreigners employed in any enterprise under sub-clause (2) may repatriate in foreign currency up to 75% of their salaries, allowances, remunerations etc.

13. *Approval required for modernization, diversification or extension of an industrial enterprise:*

Enterprises should obtain approval of His Majesty's Government for modernization, diversification or extension.

14. *Facilities to be enjoyed by enterprises already established :*

- (1) If an enterprise-established prior to the commencement of this Act-has been enjoying any facility, concession or protection provided under the then prevailing law, such an enterprise shall continue enjoying the same facility, concession or protection.

Provided that an enterprise shall be entitled to the facility, concession or protection only under this Act in case the periods of entitlement were not previously stipulated.

- (2) If an enterprise, established with the permission granted before the commencement of this Act, is not enjoying any facility, concession and protection under the then prevailing law and if it is entitled to such facility, concession and protection under this Act, such an enterprise shall enjoy the facility, concession and protection pursuant to this Act.

- (3) An enterprise which had received permission prior to the commencement of this Act but was established or had started production after the commencement of this Act, shall be entitled to enjoy the facility, concession and protection pursuant to this Act.

- (4) An enterprise-classified pursuant to prevailing law prior to the commencement of this Act, wants to

change its classification or to diversify or to expand in accordance with this Act, facility, concession and protection for such an enterprise shall be determined on the basis of the facility, concession and protection previously enjoyed by the enterprise.

15. *His Majesty's Government may issue directives:*

His Majesty's Government may issue directives to any enterprise on the following issues and it shall be the duty of the concerned enterprise to honour such directives:

- (a) Issues relating to the quality standard, price and the distribution system of the product or services of the enterprise.
- (b) Issues relating to the management of the enterprise which has been closed or been operative below 20% of its total installed capacity.
- (c) Issues relating to the maintenance of harmonious relationship between labour and management of the enterprises.
- (d) Issues relating to environmental pollution caused by the enterprise.
- (e) Issues relating to the safeguarding of public welfare in relation to the enterprise.

16. *Submission of Report:*

An enterprise established under this Act shall have to submit report in a designated form to the Department.

17. *Power of His Majesty's Government:*

- (1) His Majesty's Government may take the following actions against any enterprise for having established

without obtaining permission in pursuance to this Act or for non compliance of the directives pursuant to clause 15 or for non submission of report pursuant to clause 16 or for violating any one of the provisions of this Act or for abusing the facilities provided under this Act:

- (a) To impose a fine ranging from one thousand to fifty thousand rupees.
- (b) To suspend or withdraw the facility, concession and protection.
- (c) To depute re-representative to operate the enterprise under his supervision.
- (d) To close down.

(2) Before taking any action under the above sub-clause (1), the concerned enterprise shall be given reasonable time either to submit explanation or to overcome the short-comings.

18. Arbitration :

(1) Disputes with regard to an industrial issue shall be referred to arbitration consisting of the following arbitrators:

- (a) One arbitrator to be appointed by each of the concerned parties.
- (b) One legal expert selected by the arbitrators appointed pursuant to clause (a).
- (2) The arbitrator selected pursuant to clause (b) of sub-clause (1) shall act as chairman in the arbitration proceedings.

(3) If any party fails to appoint its arbitrator, another party may serve a written notice to the defaulting party to appoint the arbitrator within a period of three months. If the party concerned fails to appoint its arbitrator within the stipulated period His Majesty's Government shall appoint an arbitrator.

(4) If the arbitrators appointed pursuant to clause (a) of sub-clause (1) fail to select the arbitrator pursuant to clause (b) within three months from the date of their appointment, His Majesty's Government shall appoint such an arbitrator.

(5) No suit or complaint may be instituted in any office or court in connection with any issue referred to the arbitrators pursuant to this clause. The decision made by the arbitrators on such an issue shall be binding on the concerned parties subject to other provisions contained in this clause.

(6) The arbitrators, in connection with their proceedings, shall have the same powers as these of a court under the prevailing law in respect of attendance and examination of witnesses and in respect of submission of documents.

(7) In case any arbitrator expires or if he expresses inability or is negligent toward duty, the party may replace him by another arbitrator. If the party fails to substitute another arbitrator, the other party may serve a written notice to appoint the arbitrator within a period of fifteen days. If the concerned party fails to appoint the arbitrator within the stipulated

period or if the arbitrator thus appointed expresses his inability or is negligent to duty, the remaining arbitrators alone may undertake arbitration proceedings and make decisions thereof.

8) In the event of divergence of opinion among the arbitrators, the decision of the majority shall prevail. In case of a tie, the opinion endorsed by the Supreme Court shall prevail.

(9) The decisions made by the arbitrators pursuant to this clause shall be final and shall be executed like the decision of a court. No suit, complaint or appeal may be instituted against such decision in any office or court.

(10) Except as provided in this clause, other procedures as to arbitration shall be as designated.

19. *Power to make rules :*

(1) His Majesty's Government may make rules to implement the objectives of this Act.

(2) Without prejudice to the generality of the power conferred by sub-clause (1), rules may be framed particularly in respect of the following issues :

(a) Issues relating to the classification of industries and the facilities to be provided to them.

(b) Issues relating to fixing of percentage in respect of value added.

(c) Issues relating to the evaluation of the fixed asset of an enterprise.

(d) Issues relating to the establishment and management of the Export Promotion Area.

20. *Delegation of Authority:*

His Majesty's Government may delegate to any department, office or officer, the authority, either conferred upon it or upon the Department of Industry or the Department of Cottage and Village Industry under this Act or under the Rules made under this Act.

21. *Savings:*

Notwithstanding anything contained in the prevailing Act, the provisions of this Act and the rules made there-under shall prevail.

22. *Repeal:*

The Industrial Enterprises Act, 2030 is hereby repealed.

An Act Relating to Foreign Investment and Technology

Preamble :

Whereas it is expedient to make legal provision for the promotion and for the regularisation of the foreign investment and technology in order to mobilize capital, manpower and natural resources to the optimum degree so as to contribute to the economic development in the country, thereby maintaining the welfare and economic interest of the people in general.

Now, therefore, His Majesty King Birendra Bir Bikram Shah Deva has made this Act on the advice and with the consent of the National Panchayat.

1. Short Title and Commencement :

- (a) This Act may be called "Foreign Investment and Technology Act, 2038"
- (b) It shall come into force at once.

2. Definitions :

In this Act, unless the subject or context otherwise requires.

- (a) "Industry" means a medium or a large industrial enterprise for which an agreement for foreign investment, foreign loan or transfer of technology has

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been approved pursuant to this Act or the Rules made thereunder.

Explanation : For the purpose of this clause, medium or large industry means the medium or large industrial enterprise as defined in the Industrial Enterprises Act, 2038.

(b) "Foreign Investment" means the investment in the form of shares in foreign currency or in tangible assets made by a foreigner in the concerned industrial enterprise. Investment also includes the reinvestment of the earnings made out of such investment.

(c) "Foreign Loan" means the loan facility in foreign currency or in tangible assets obtained by the concerned enterprise.

(d) "Technology Transfer Agreement" means the agreement entered into between the concerned enterprise and the foreign investor in respect of the following.

(1) Use of any technological right, speciality, formula, process, patent or technical knowhow.

(2) Use of trade mark.

(3) Acquiring services on technology, consultancy, management and marketing.

(e) "Foreign Investor" means any foreign firm, company, individual, government or international institution.

(f) "National Investor" means any national firm, company, institution or Nepali citizen.

(g) "Department" means the Department of Industry of His Majesty's Government.

(h) "Board" means the Industrial Promotion Board as established pursuant to Industrial Enterprises Act, 2038.

(i) "Designated" or "as designated" means designated or as designated in the Rules made under this Act.

3. Obtaining Permission:

Any foreign investor or the foreign investor and the national investor desirous of establishing any joint venture shall have to submit an application in the designated form to the Department to obtain the permission for such a venture.

4. Granting of Permission:

In case an application is submitted pursuant to clause 3, the Department may, on the basis of the recommendation of the Board, grant permission to establish the industrial enterprise.

5. Issues to be considered by the Board while making any recommendation:

The Board, while making any recommendation for the purpose of clause 4 shall have to consider the following:

(a) Whether the concerned industrial enterprise is desirable for Nepal.

(b) Whether the industrial enterprise contributes to import substitution or export promotion.

(c) Whether the industrial enterprise utilizes the local raw materials.

(d) Whether the industrial enterprise makes available

employment opportunities, management, skill and technical training to the Nepali citizens.

- (e) Whether the terms and conditions of the agreement for the foreign investment, foreign loan and the transfer of technology are reasonable.

6. *Matters to be mentioned in the letter of Permission:*

While granting permission to established any industrial enterprise pursuant to clause 4, the Department shall have to issue the letter of permission to the applicant mentioning the following matters:

- (a) The name, particulars and location of the industrial enterprise.
- (b) The objective and capacity of the industrial enterprise.
- (c) The proportion of the foreign investment in the total investment package.
- (d) The amount and the source of foreign loan and the payment schedules of the principal and the interest thereof.
- (e) The value as assessed by the Department of the tangible assets obtained in the form of foreign investment or foreign loan.
- (f) The agreement for transfer of technology and the payment to be made thereof.
- (g) The concerned foreign currency.
- (h) The period of use of foreign investment or foreign loan.
- (i) Other matters as deemed necessary by the Department.

7. *Obtaining of approval:*

(1) Industrial enterprises shall not be authorized to resort to the following without the prior approval of the Department:

- (a) To obtain foreign loan.
- (b) To increase the proportion of the foreign investment.
- (c) To enter into an agreement for the transfer of technology.
- (d) To diversify the objective, expand the capacity or modernize the facilities to arrange new or additional foreign investment for such purposes.
- (2) While granting approval for the purpose pursuant to sub-clause (1), the Department shall take action on the basis of the recommendation of the Board.

8. *Recognition of the already established industry:*

Any industrial enterprise for which an agreement has been approved for foreign investment, foreign loan or transfer of technology by His Majesty's Government, any department or office of His Majesty's Government prior to the commencement of the Act, shall be deemed to be an industry under this Act.

9. *Facility, Concession and Protection:*

Any industrial enterprise established under this Act shall be granted the same facility, concession and protection as provided by the Industrial Enterprises Act, 2038.

10. *Right to repatriation:*

Any foreign investor whose agreement has been

approved for foreign investment, foreign loan or transfer of technology, may repatriate outside Nepal the amount received in foreign currency at the prevailing rate of exchange in the following manner:

- (a) the amount received by sale of the whole or any portion of the foreign investment,
- (b) the amount received as dividend on the foreign investment,
- (c) the amount received as repayment of the principal and payment of interest on the foreign loan,
- (d) the amount received under the agreement for the transfer of technology,

(e) the amount received as compensation consequent to nationalisation or acquisition of any property.

Provided that the amount received pursuant to Sub-clause (a) and (b) may be patriated outside Nepal only in such installments as fixed by His Majesty's Government if special circumstances so warrant.

11. *Establishment of Industrial enterprise by His Majesty's Government:*

- (1) His Majesty's Government may, by entering into an agreement with a foreign or national investor, establish an industrial enterprise in the form of a public company.
- (2) Any industrial enterprise established pursuant to sub-clause (1), shall enjoy the facility, concession and protection as mentioned in the agreement.

12. *Establishment of joint venture industrial enterprise with a foreign government:*

- (1) His Majesty's Government may establish an industrial enterprise by entering into agreement with any foreign government.
- (2) The registration and operation of the industrial enterprise established pursuant to sub-clause (1), and the facility, concession and the protection applicable to such an enterprise shall be as mentioned in the agreement.

13. *Nationalisation of an industrial enterprise;*

Industrial enterprises established under this Act and any property thereof shall not be nationalised.

Provided that for safeguarding the national interest and defence, His Majesty's Government may nationalise by paying just compensation.

14. *His Majesty's Government may issue directives:*

His Majesty's Government may issue directives to any industrial enterprise on the following issues and it shall be the duty of the concerned enterprise to honour such directives :

- (a) Issues relating to the quality standard, price and the distribution system of the product or services of the industrial enterprise.
- (b) Issues relating to the management of the industrial enterprise.
- (c) Issues relating to the maintenance of harmonious relationship between labour and management of the industrial enterprise.

- (d) Issues relating to environmental pollution caused by the industrial enterprise.
- (e) Issues relating to the safeguarding of public welfare in relation to the enterprise.

15. *Submission of Report:*

An industrial enterprise establish under this Act shall have to submit report in a designated form to the Department.

16. *Power of His Majesty's Government:*

(1) His Majesty's Government may take the following actions against any industrial enterprise which acts in contravention to any provision of this act or the rules made thereunder:

- (a) To impose a fine ranging from one thousand to fifty thousand rupees.
- (b) To curtail, suspend or withdraw the facility concession and protection provided to the industrial enterprise,
- (c) To depute representative to operate the industrial enterprise under his supervision,
- (d) To close down,

[2] Before taking any action under above sub-clause, the concerned enterprise shall be given reasonable time to submit explanation or to overcome the shortcomings.

17. *Arbitration:*

(1) Any dispute arising out of the enforcement of this Act or rules made thereunder, if not settled amicably between the foreign investor, the industrial enterprise and the Department shall be settled by arbitration.

(2) Unless otherwise provided by the Department at the request of the foreign investor, the arbitration shall be held according to the prevalent Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL).

(3) Arbitration shall be held in Kathmandu. The Law of Nepal shall be applicable in the arbitration.

18. *Power to make Rules:*

(1) His Majesty's Government may make rules to carry out the objective of this Act.

(2) Without prejudice to the generality of the power conferred by sub-clause (1), particular rules may be framed on any one or all of the following issues:

- (a) To specify the industrial enterprises which may be established or operated with foreign investment.
- (b) To designate the terms and conditions relating to foreign investment.
- (c) To evaluate the tangible assets obtained in the form or foreign investment of foreign loan.
- (d) Issue relating to the payment of interest and repayment of principal on the foreign loan.
- (e) Issues relating to the guarantee and safeguarding of the foreign loan.
- (f) Issues relating to the classification of the foreign investment and other facilities to be provided to them.

19. *Savings:*

In matters specifically provided for in this Act, the provisions of this Act shall prevail and, in others, the provision of prevalent Nepal law shall apply.



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