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The Foreign Investment and Technology Transfer Act, 2019 (2075) - NEPAL

Date of Authentication March 27, 2019 (2075.12.13) Act No. 34 of the year 2075 (2018/19)

An Act Made to Amend and Consolidate Laws Relating to Foreign Investment and Technology Transfer

Preamble:

Whereas, it is expedient to amend and consolidate the prevailing Nepal laws relating to foreign investment and technology transfer in order to make national economy competitive, strong and employment-oriented through mobilization to the maximum extent of the available means and resources for economic prosperity of the country, and to achieve sustainable economic growth through industrialization while creating investment friendly environment to attract foreign capital, technology and investment in the sectors of import substitution, export promotion, through increase in productivity, and of infrastructure development and production of goods or services;

Now, therefore, be it enacted by the Federal Parliament.

1. Short Title and Commencement:

(1) This Act may be cited as the "Foreign Investment and Technology Transfer Act, 2019 (2075)."

(2) Sections 10 and 11 of this Act shall commence on such a date as appointed by the Government of Nepal by a notification in the Nepal Gazette, and other Sections shall commence forthwith.

2. Definitions:

Unless the subject or the context otherwise requires, in this Act,-

(a) "Industry" means any industry established in accordance with the prevailing law relating to industrial enterprises.

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(b) "One Stop Service Center" means the One Stop Service Center established in accordance with the prevailing law relating to industrial enterprises.

(c) "Non-resident Nepali" means a person holding the non-resident Nepali identity card in accordance with the prevailing law relating to non-resident Nepalis.

(d) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

(e) "Securities Board" means the Securities Board of Nepal established in accordance with the prevailing law relating to securities.

(f) "Technology transfer" means any transfer of technology to be made under an agreement between an industry and a foreign investor on the following matters:

(1) Patent, design, trademark, goodwill, technological specificity, formula, process,

(2) User's license, technological know-how sharing or use of technological knowledge (franchise),

(3) Provision of foreign technical adviser, management and marketing service or other technological skill or knowledge.

(g) "Board" means the Industry and Investment Promotion Board referred to in the prevailing law relating to industrial enterprises.

(h) "Ministry" means the Ministry of Industries, Commerce and Supplies

(i) "Investment Board" means the Investment Board referred to in the prevailing law relating to the Investment Board.

(j) "Foreign investment" means the following investment made by a foreign investor in an industry or company:

(1) Share investment in foreign currency,

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- (2) Re-investment in an industry of dividends derived from foreign currency or shares,
 - (3) Lease finance made in accordance with Section 6,
 - (4) Investment made in venture capital fund in accordance with Section 9,
 - (5) Investment made in listed securities through secondary securities market in accordance with Section 10,
 - (6) Investment made by purchasing shares or assets of a company incorporated in Nepal,
 - (7) Investment received through the banking channel after issuing securities in a foreign capital market by an industry or company incorporated in Nepal in accordance with Section 11,
 - (8) Investment made through technology transfer, or (9) Investment maintained by establishing and expanding an industry in Nepal.
- (k) "Foreign investor" means any foreign individual, firm, company, Non-resident Nepali or foreign government or international agency or other corporate body of similar nature that makes foreign investment, and also includes, in the case of a foreign investor that is an institutional foreign investor, the ultimate beneficiary of such an institution.
- (l) "Foreign investment approving body" means the body referred to in Section 17.
- (m) "Department" means the Department of Industries.
- (n) "Institutional foreign investor" means a foreign company, corporate body or international institution that makes foreign investment.

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Chapter-2

Foreign Investment

3. Foreign investment may be made:

- (1) A foreign investor may make foreign investment in any industry and derive gains from such investment.
- (2) Notwithstanding anything contained in sub-section (1), no industry operated with foreign investment may make foreign investment of profits earned or in any other manner, in any industry referred to in the Schedule. Provided that technology transfer may, with the approval of the Department, be made in an industry referred to in the Schedule which is established with Nepali investment.
- (3) Notwithstanding anything contained in sub-section (1), approval shall not be given for making foreign investment in any industry of an amount that is less than the amount specified by the Government of Nepal by a notification in the Nepal Gazette.

4. Foreign investment may be made individually or jointly:

A foreign investor may make foreign investment individually or jointly or by establishing an industry jointly with an industry established in Nepal or a Nepali citizen.

5. Foreign investment may be made by purchasing assets or shares of industry:

A foreign investor may make foreign investment by purchasing the assets of or shares not exceeding the prescribed percent of any industry established in Nepal.



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6. Lease investment may be made:

A foreign investor may make foreign investment, subject to the prescribed ceiling, in any aircraft, ship, machinery and equipment, construction equipment or similar other equipment.

7. Investment may be made through technology transfer:

(1) A foreign investor may make foreign investment by making technology transfer in any industry established in Nepal.

(2) The terms of technology transfer to be made pursuant to sub-section (1) shall be as specified in the technology transfer agreement entered into between the concerned industry and the foreign investor.

(3) The agreement referred to in sub-section (2) may not provide for the repatriation of royalty in excess of the prescribed ceiling.

(4) The agreement referred to in sub-section (2) has to be got approved by the foreign investment approving body.

(5) The foreign investment approving body may, in giving approval pursuant to sub-section (4), specify the necessary terms on the basis inter alia of international practices on foreign investment and production and selling capacity of the industry.

8. Foreign investment may be made by establishing a branch:

(1) Any industry incorporated in a foreign country may make foreign investment by establishing or expanding its branch industry in Nepal, subject to the prevailing law.

(2) Other provisions relating to establishment or expansion of a branch of the industry pursuant to sub-section (1) shall be as prescribed.

9. Foreign investment may be made by establishing venture capital fund:

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An institutional foreign investor may, for the purpose of investing equity in any industry, establish a venture capital fund by incorporating a company in accordance with the prevailing law, and by obtaining approval of the Securities Board.

(2) An approval shall have to be obtained by fulfilling the procedures referred to in Section 15 for the investment in an industry from the fund referred to in sub-section (1).

(3) Such a company shall provide the statements of the venture capital fund referred to in sub-section (1) to the Department in every six months.

(4) Other provisions relating to the fund established pursuant to subsection (1) shall be as prescribed.

10. Trading in securities may be made:

(1) An institutional foreign investor establishing a venture capital fund pursuant to Section 9 shall have to be registered in the Securities Board for trading in securities.

(2) The foreign investor registered in the Securities Board pursuant to sub-section (1) may, through the secondary securities market, trade in securities of an industry in which foreign investment may be made pursuant to this Act.

(3) In carrying on trading in securities pursuant to sub-section (2), the minimum number of securities to be purchased, the ceiling of investment, minimum period for which it has to held the securities after the purchase, reserve fund to be held in foreign currency for purchasing securities and other provisions related thereto shall be as prescribed.

11. Loan may be borrowed or foreign currency acquired by issuing securities:

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(1) Any public limited company incorporated in Nepal or a corporate body authorised under the prevailing law to issue securities may, with the approval of the Nepal Rastra Bank and the Securities Board, borrow a loan or acquire foreign currency by issuing bonds, debentures or other securities in the capital market of a foreign country.

(2) A company which is incorporated with foreign investment in Nepal may, subject to the prevailing law relating to securities, borrow a loan by issuing securities within Nepal.

(3) A loan borrowed or foreign currency acquired by issuing securities pursuant to sub-sections (1) and (2) shall have to be invested in Nepal.

(4) Other provisions relating to the issuance of securities referred to in this Section shall be in accordance with the prevailing law relating to securities.

12. Loan may be borrowed from foreign financial institution:

Any industry having foreign investment may on the recommendation of the Ministry and with the approval of the Nepal Rastra Bank, in accordance with the prevailing law, borrow a project loan from, or a loan by entering into a project financing agreement with, any foreign financial institution.

13. Maximum Ceiling threshold of foreign investment not to be prescribed:

(1) No maximum ceiling of the amount to be invested and the share of investment by a foreign investor wishing to make investment in Nepal shall be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in the case of service industry, the maximum ceiling of equity foreign investment and ceiling of investment to be made in securities pursuant to Section 10 may be so prescribed as not to be lesser than the commitment made

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by Nepal in respect of the concerned sector or sub-sector at the time of obtaining membership of the World Trade Organisation.

14. Agreement may be made with commercial bank:

(1) A foreign investor making investment pursuant to this Act may, for purposes of business related to its investment made in Nepal, execute a tripartite agreement (escrow-agreement) with its partner investor or other foreign investor and any such commercial bank or infrastructure development bank as recognized by the Nepal Rastra Bank. Explanation: For the purposes of this Section, the term “escrow agreement” means an agreement by which the contracting parties agree to the effect that any amount, documentary evidence shall be handed over to any third party for the security of transaction between them or as a security for any guarantee, and such amount, documentary evidence or guarantee shall be provided to the concerned party after the completion of contractual obligations by the contracting parties.

(2) A bank executing an escrow agreement pursuant to sub-section (1) shall act as an agent of the parties to the agreement.

(3) Other provisions relating to an escrow agreement to be made pursuant to sub-section (1) shall be as prescribed.

Chapter-3

Approval and Repatriation of Foreign Investment

15. Application to be made for approval to make foreign investment:

(1) A foreign investor wishing to make foreign investment shall have make an application, setting out the details, accompanied by a time schedule for bringing foreign investment into Nepal and action plan on investment in the industry, to the Foreign Investment Approving

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Body for approval, to make foreign investment, in such a form and setting out such details as prescribed.

(2) If, in examining an application received pursuant to sub-section (1), it appears that such documents as prescribed have been completed, the Foreign Investment Approving Body shall give approval for foreign investment in such a form as prescribed within period of seven days of the date of receipt of the application.

(3) An industry which has obtained approval pursuant to sub-section (2) wishes to make investment from the eared profits in the same industry or in any industry other than that referred to the Schedule, it is not necessary for it to reobtain approval on foreign investment. Provided that the natter requiring license or permission under the prevailing law for the purpose of registration of an industry or company or tax or any other business shall be governed accordingly.

(4) If any industry is established or the structure of ownership of any industry is changed because of foreign investment, in accordance with sub-section (3), such an industry shall give information thereof to the Department and the Nepal Rastra Bank. On receipt of such information, the Department shall maintain records thereof.

(5) If, in examining the application pursuant to sub-section (2), it appears that approval cannot be given, the Foreign Investment Approving Body shall give information thereof in writing, setting out the ground and reason therefor, to the applicant within a period of seven days.

(6) If, upon receipt of information in accordance with sub-section (5), the concerned investor is not satisfied with the decision made by the Department, such an investor may make an application to the Ministry for the review of the decision.

(7) The Ministry shall, upon making necessary examination of the application received pursuant to sub-section (6), make a decision thereon within a period of thirty days.

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16. To give information to the Nepal Rastra Bank:

(1) Upon obtaining the approval for foreign investment in accordance with Section 15, the foreign investor shall give information in writing, along with the self-declaration to the effect that the amount of such investment has been earned from any legitimate source, to the Nepal Rastra Bank. After giving such information, the foreign investor may bring the amount of such investment into Nepal.

(2) A foreign investor shall bring the amount to be invested in convertible foreign currency through the banking system upon completion of such procedures as determined by the Nepal Rastra Bank. Provided that an Indian investor may also make investment of such amount in Indian currency through the banking channel.

(3) Notwithstanding anything contained in sub-section (3), lease investment referred to in Section 6 and loan investment made by issuing securities referred to in Section 11 shall be as prescribed.

17. Foreign Investment Approving Body:

(1) The Department shall approve the foreign investment not exceeding six billion Rupees.

(2) The Investment Board under the Investment Board Act, 2011 (2068) shall approve the foreign investment exceeding six billion Rupees.

18. Period within which investment has to be made:

(1) A foreign investor shall have to make investment of the amount in relation to which approval has been obtained for foreign investment pursuant to sub-section (2) of Section 15 within such period as prescribed.

(2) A foreign investor which has already obtained approval for making foreign investment in accordance with the prevailing law, at the time of the commencement of this Act, shall also make investment of the

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prescribed minimum amount with the period prescribed pursuant to sub-section (1).

(3) The approval giving body may revoke the investment approval given to an industry that fails to make investment within the period referred to in sub-section (1) or (2) or Section 43, except in case of reasonable grounds.

19. To give information on sale of or transfer of title to shares:

(1) In the case of sale of, or transfer of title to, or otherwise change in the ownership or vested ownership of, the property, assets or shares or any other kind of financial equipment generated in Nepal from foreign investment, whether effected within or outside Nepal, the concerned company shall, not later than thirty days of the effect of transaction, give information thereof, along with the relevant documentary evidence, to the body giving approval for making such investment and have the same recorded as prescribed.

(2) In the case of change in the ownership of the industry subject to foreign investment in Nepal as a result of the transfer of title to any property, assets, shares or any other financial equipment of any holding company, the concerned branch industry or unit of the industry shall have the liability to give information referred to in sub-section (1).

(3) In the case of a transaction in accordance with sub-section (1), it shall not be recorded pursuant to sub-section (1) until tax is paid by the concerned industry, upon setting out the amount of transaction, in accordance with the prevailing law.

(4) Other provisions relating to the sale of and transfer of title to shares shall be as prescribed.

20. Repatriation of investment and earnings:

(1) A foreign investor may, if it so wishes, repatriate its investment from Nepal by selling wholly or partly of the shares or industry having

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its investment in accordance with the prevailing Nepal law, after paying all such taxes as may be leviable in accordance with the prevailing Nepal law.

(2) A foreign investor may repatriate the following amount in the same foreign currency in which the investment has been made or other convertible foreign currency with the approval of the Nepal Rastra Bank, after paying the tax related liabilities under the prevailing law:

- (a) Amount received from the sale of shares with foreign investment,
- (b) Amount of profit or dividend received from foreign investment,
- (c) In the case of liquidation or winding up of the industry or company, amount remaining after paying all liabilities following the liquidation or winding up,
- (d) Amount of royalty received under the technology transfer agreement, Provided, however, that in the case of the royalty or fee for the use of a trademark under the transfer of technology in a liquor industry other than a liquor industry exporting cent percent of liquor, the amount of such royalty shall not exceed five percent of the total selling price, as prescribed, excluding the prevailing tax.
- (e) Amount of lease rent under the lease investment,
- (f) Amount received as damages or compensation, if any, received from the final settlement of a law suit, arbitration or any other legal process in Nepal,
- (g) Amount that can be repatriated in accordance with the prevailing law.

(3) In repatriating amount in a convertible foreign currency in accordance with sub-section (1) or (2), it shall be repatriated by making conversion at the prevailing exchange rate.

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(4) Where any foreign investor has lent a loan to any industry or company against the pledge or mortgage of a movable or immovable property situated in Nepal and the movable or immovable property pledged or mortgaged required to be auctioned or forfeited because of nonrepayment of the principal or interest of such a loan, the institution lending such a loan may repatriate the principal and interest of the loan by auction of such property as if it were a bank or financial institution of Nepal.

(5) In the case of termination of a lease agreement because of nonpayment in accordance with the lease agreement or breach of its terms, the foreign investor may repatriate its investment and the property invested in the lease.

(6) A foreign investor who wishes to repatriate the foreign investment or amount earned therefrom in accordance with this Section shall make an application, in the form as prescribed, to the foreign investment approving body for approval to that effect. Provided, that such an application shall be made to the Single Stop Service Centre, if the Government of Nepal, by a notification in the Nepal Gazette grants to the Single Stop Service Centre, the power to the body to give approval relating to repatriation of foreign investment or amount earned therefrom.

(7) If, in examining an application received pursuant to sub-section (6), it appears that the foreign investor has fulfilled the terms and liabilities referred to in this Act, prevailing law and the agreement made in relation to foreign investment, the foreign investment approving body shall give approval to repatriate the foreign investment or amount earned therefrom not later than fifteen days of the date of receipt of the application.

(8) After obtaining the approval pursuant to sub-section (7), the foreign investor may make an application to the Nepal Rastra Bank for the foreign currency exchange facility.

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(9) The Nepal Rastra Bank shall, upon receipt of an application in accordance with sub-section (8), provide the exchange facility to the foreign investor for the repatriation of foreign investment.

(10) Where the amount of investment is to repatriated by selling wholly or partly any industry with foreign investment or upon revocation of the registration of the industry or company for any reason, repatriation of the remaining amount may be made only after the payment or settlement of all liabilities including the tax payable by such an industry.

(11) Notwithstanding anything contained elsewhere in this Section, a foreign investor may, in repatriating foreign investment made in any industry in accordance with this Act or profit earned therefrom, repatriate such investment or profit only to the extent of the ratio of the portion of its investment in the concerned company.

(12) If any foreign investor is not satisfied with a decision made by the body giving such approval in the course of repatriation of the amount of its investment, the investor may make an application to the Ministry. The Ministry shall make a decision on such an application within thirty working days.

Chapter-4

Promotion, Facilitation and Regulation of Foreign Investment

21. Functions, duties and powers of the Board:

In addition to its functions, duties and powers referred to, elsewhere in this Act, other functions, duties and powers of the Board shall be as follows:

(a) To give suggestions to the Government of Nepal for such policy, institutional and procedural reforms as may be required to be made

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for the attraction of foreign investment in industrial and infrastructure development,

(b) To set such strategies and programs as may be required for the enhancement of attraction of foreign investment in Nepal and promotion and protection thereof,

(c) To give approval for the establishment of industries and infrastructures with foreign investment, and promote foreign investment,

(d) To facilitate for foreign investment by enhancing, expanding and protecting foreign investment,

(e) To make coordination at the policy and implementation levels of foreign investment,

(f) To assist in the implementation of policies and laws relating to foreign investment,

(g) To make arrangements for the provision of services to foreign investors from the Single Stop Service Centre,

(h) To obtain information as to whether activities of giving approval for foreign investment and delivery of services have been carried out properly, and give necessary direction to the concerned body,

(i) To make facilitation, if there arises any problem in respect of the repatriation of foreign investment or amount earned, as referred to in Section 20 or implementation of this Act or the rules framed under this Act, in that respect,

(j) To perform, or cause to be performed, such other functions as prescribed.

22. Functions, duties and powers of the Department:

In addition to the functions, duties and powers referred to, elsewhere in this Act, other functions, duties and powers of the Department shall be as follows:

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- (a) To create conducive environment for the establishment and operation of industries to be established with foreign investment,
- (b) To facilitate foreign investors to obtain any approval or permission including initial environmental assessment, environmental impact assessment in accordance with the prevailing law,
- (c) To maintain updated records of foreign investments approved or permitted in accordance with this Act or the prevailing law and of the technology transferred in Nepal, update such records and make the same public periodically,
- (d) To give approval for foreign investors, and foreigner experts, technicians or managerial employees who are engaged in the industries with foreign investment pursuant to Section 27 to repatriate investment and remuneration,
- (e) To make and enforce Standard Operating Procedures in order to make foreign investment transparent and to make procedural simplification,
- (f) To make recommendation for visas to the foreign investors and their authorised representatives, and foreign experts, technical or managerial employees engaged in industries with foreign investment in accordance with Section 27 and minor members of their family, and make facilitation for that purpose.
- (g) To make regular supervision and monitoring as to whether any industry with foreign investment has misused any facility granted in accordance with this Act,
- (h) To facilitate industries with foreign investment in establishing industries in an industrial zone or special economic zone,
- (i) To perform, or cause to be performed, such other functions as prescribed.

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23. Services to be provided through the Single Stop Service Centre:

(1) The Government of Nepal may make necessary arrangement so that exemptions, facilities, concessions or services to be provided to the foreign investors in accordance with this Act and other prevailing law are provided through the Single Stop Service Centre.

(2) In managing the services to be provided through the Single Stop Service Centre pursuant to sub-section (1), necessary provision shall be made so that the following services are provided gradually:

- (a) Registration and administration of industries,
- (b) Approval of foreign investment and loan,
- (c) Registration and administration of companies,
- (d) Labour permit,
- (e) Visa facility,
- (f) Testing and control of quality of goods produced by industries,
- (g) Approval of environmental study report,
- (h) Energy and infrastructure development, and necessary coordination for that purpose, as well as focal point among other bodies,
- (i) Exemptions, facilities to which industries are entitled,
- (j) Provision of permanent account number,
- (k) Foreign exchange approval,
- (l) Any service related to such other functions as may be required to be performed for industries in accordance with this Act and the Regulation framed under this Act.

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(3) It may be so prescribed that the Single Stop Service Centre may provide other services referred to in the prevailing law, in addition to the services, facilities to be provided pursuant to this Section.

Chapter-5

Exemptions, Facilities and Concessions to be Provided to Industries with Foreign Investment or Foreign Investors

24. Facilities to be obtained by industries:

(1) In addition to the exemptions, facilities, concessions or protection referred to in this Act, be provided to any industry with foreign investment, such exemptions, facilities or concessions as may be available under the prevailing Industrial Enterprises Act and other prevailing law shall.

(2) Notwithstanding anything contained in sub-section (1), such facilities to which a sick industry is entitled in accordance with the prevailing law shall not be available to any industry with foreign investment.

25. Facility to deal with foreign currency:

(1) A foreign investor or industry with foreign investment may open an account in Nepali currency with any commercial bank, infrastructure development bank or financial institution of Nepal and in foreign currency with any bank or financial institution licenced to deal with convertible foreign currency in accordance with the prevailing law and carry on transaction accordingly. Provided, however, that approval of the Nepal Rastra Bank shall be obtained to carry on transaction by opening an account in convertible foreign currency.

(2) An industry with foreign investment may, in order to mitigate the foreign currency exchange fluctuation risk, use any approved derivatives equipment through a bank or financial institution.

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26. Facility of foreign currency:

(1) An industry with foreign investment may, on recommendation of the foreign investment approving body, and with the approval of the Nepal Rastra Bank, obtain the foreign exchange facility for such amount as may be required for the following purposes:

(a) To pay such remuneration as may be payable to any foreign expert, technical or managerial employee employed in the industry in accordance with Section 27,

(b) To pay the principal or interest of any bonds or debentures issued in accordance with sub-section (1) of Section 11, (c) To repatriate the foreign investment or income earned in accordance with Section 20.

(2) After obtaining approval from the Nepal Rastra Bank in accordance with sub-section (1), an industry with foreign investment may pay or use such amount as approved from the foreign currency held in the account of such industry as referred to in Section 25.

(3) Any foreign expert, technical or managerial employee employed in an industry in accordance with Section 27 may repatriate to his or her country in convertible foreign currency such amount of saving out of the remuneration receivable by him or her, after paying income tax in Nepal in accordance with the prevailing law.

(4) The exchange or repatriation of convertible foreign currency in accordance with sub-section (2) or (3) shall be made according to the open market exchange rate.

27. Provision relating to experts, top-level technical and managerial employees:

(1) An industry with foreign investment shall fulfill the positions of experts in its top-level management, high-level technical, managerial employees or technical employees from amongst the Nepali citizens.

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(2) Notwithstanding anything contained in sub-section (1), if an industry with foreign investment cannot fulfil the positions of experts in its toplevel management, high-level technical, managerial employees or technical employees from amongst the Nepali citizens and it is necessary to transfer technical knowledge or skill through any technical or expert of another country in such an industry, the industry may employ any foreign citizen in accordance with the prevailing law.

(3) The concerned industry shall provide details relating to the foreign citizens employed in accordance with sub-section (2) to the Department. The Department shall provide the details also to the Ministry of Finance, Ministry of Home Affairs and Ministry of Labour, Employment and Social Security.

(4) The employees and workers employed in any industry with foreign investment in accordance with sub-section (2) shall comply with the terms and conditions referred to in the prevailing Nepal law.

28. Provision relating to industrial security:

Such industrial security shall be provided to any industry with foreign investment as may be available to any other industry established in Nepal.

29. Facility of identity card:

The Department may provide an identity card in the prescribed form to any foreign investor who makes such foreign investment as prescribed.

30. Provision relating to visa facility:

(1) The non-tourist visa not exceeding six months shall be granted to a foreign citizen who visits Nepal to make a study, research or survey for foreign investment.

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(2) The business visa shall be granted to a foreign investor or one authorized representative of him or her and the family members of such an investor or representative to stay in Nepal until the foreign investment equal to such minimum amount as prescribed is maintained. Explanation: For the purpose of this Section, the term “family member” means the husband or wife, father, mother and minor son, daughter of the foreign investor or his or her authorized representative.

(3) Notwithstanding anything contained in sub-section (2), in the case of an investor who makes investment exceeding the prescribed amount, such facility shall be provided only to a maximum of two persons and his or her family member.

(4) The residential visa shall be provided to a foreign investor who makes foreign investment in an amount exceeding one million US dollars or in convertible foreign currency equivalent thereto at one time or to the authorised representative of him or her and the family member of such a person until the foreign investment equal to such minimum amount as prescribed is maintained.

(5) The tourist visa shall be provided to any foreign expert, technical or managerial employee to be employed in an industry in accordance with Section 27.

(6) The body giving working approval and work permit for the nontourist visa shall make decision whether or not to give working approval or work permit, after completing the necessary procedures not later than fifteen days.

(7) Other provisions relating to visa facility shall be as prescribed.

31. Provisions relating to land:

(1) A foreign investor shall have to manage such land as may be required for the industry, by purchasing it on his or her own or through other means in accordance with the prevailing law.

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(2) Notwithstanding anything contained in sub-section (1), if a foreign investor is unable to purchase or manage the necessary land on his or her own for the operation of the industry as prescribed and makes a request, setting out the content, for the purchase or acquisition of the land, the foreign investment approving body shall make necessary recommendation, coordination and facilitation for that purpose.

(3) If such land as in excess of the ceiling is required for an industry which is operated or to be operated with foreign investment, for the establishment and operation of the industry, the body registering the industry shall make necessary recommendation, coordination and facilitation in accordance with the prevailing law. The land that is not subject to such ceiling shall be used only for the same purpose for which it has been purchased.

(4) Other provisions relating to the provision of land in lease to an industry with foreign investment and to the ceiling of land shall be in accordance with the Industrial Enterprises Act and the prevailing law.

(5) Other provisions relating to the land to be provided to any industry to be operated with foreign investment shall be as prescribed.

32. National treatment to be accorded:

(1) In respect of the terms applicable to the management, maintenance, use, transfer and sale of any foreign investment made in Nepal by a foreigner, subject to this Act and other prevailing law, after the commencement of this Act, such foreign investment shall, after the investment is brought into, and until it remains in Nepal, be accorded national treatment no less favourable than that accorded to any investment made by a Nepali person, in respect of the terms applicable to the management, maintenance, use, transfer and sale of such investment.

(2) Notwithstanding anything contained in sub-section (1), in the case of a foreign investment approved prior to the commencement of this Act, the provisions contained in the prevailing law relating to foreign

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investment in force at the time of making such an investment shall apply, and no change shall, without his or her consent, be made that may prejudice to any facility obtained by any foreign investor in accordance with that law.

(3) The following protection shall be accorded to any industry with foreign investment in accordance with sub-section (1):

(a) The industry, enterprise with foreign investment shall be accorded the same treatment as accorded to any industry of the same nature with investment made by a Nepali citizen.

(b) The industry, enterprise with foreign investment shall be free to determine the price of goods and services, subject to the prevailing law.

(c) No industry, enterprise with foreign investment shall be prevented from doing trade, as prescribed, being limited to that industry.

(d) No industry, enterprise with foreign investment shall be restricted to repatriate profit, investment, pay interest of, and repay the principal of, a loan.

(4) Notwithstanding anything contained in sub-section (1), national treatment shall not apply in respect of the following matters:

(a) Matters relating to the creation of such intellectual property rights, limits thereof, transfer of title thereto or provisions requiring compulsory licensing for the use thereof as specified in any agreement made under the World Trade Organisation,

(b) Matters relating to the exemption or facility, if any, granted to any domestic industry or goods in accordance with the prevailing Nepal law relating to public procurement,

(c) Matter relating to any grant or concession to be made or provided by the Government of Nepal,

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- (d) Matter of non-commercial services to be provided by the Government of Nepal,
- (e) Such measures relating to financial services as may be adopted or managed by the Government of Nepal upon considering appropriate on matters such as matters relating to the protection of investors, participants in the securities market, insurance policy holders or insurance policy claimants, or relating to financial institutions having liability to safeguard the financial interests of any persons or relating to maintaining soundness, morality or financial responsibility of financial institutions,
- (f) Matters involving liability or provision to accord special treatment by the Government of Nepal because of being a party to any regional or multilateral economic, monetary organisation or organisation of similar nature to which the Government of Nepal is or will be a party,
- (g) Matters relating to the terms that may be specified by the regulatory body in accordance with the prevailing law in respect of repatriation of investment to a foreign country, repayment of loan (including principal, interest and fees), payment of service fees,
- (h) Matters relating to the protection of human, animal and plant health or the environment.

33. Nationalisation or expropriation not to be made:

- (1) No industry with foreign investment in accordance with this Act shall be nationalised.
- (2) No industry shall, except for a public purpose, be expropriated directly or indirectly. If it is required to expropriate it for the public purpose, due process referred to in the prevailing law shall be fulfilled.

34. Change in terms, services and facilities:

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Notwithstanding anything contained elsewhere in this Act or the prevailing law, if any provision made in a manner to change the terms of foreign investments and any exemption, facility or concession receivable by foreign investors is to the disadvantage of any foreign investor having obtained approval prior to the making of such provision, such a change shall not apply to such an investor.

Chapter-6

Grievance Handling and Action

35. Grievance handling:

(1) If a foreign investor or industry has any grievance with respect to any act or action performed by any authority that register, regulate or monitor industries in accordance with the prevailing law or by any authority of the Single Stop Service Centre, such an investor or industry may make an application, setting out that content, to the Department for its hearing.

(2) The Department shall address, as prescribed, the grievance received in accordance with sub-section (1).

(3) If a foreign investor or industry has any grievance with respect to any act or action performed by the Department or Single Stop Service Centre, such an investor or industry may make an application, setting out the content, to the Ministry for its hearing. (4) The Ministry shall address, as prescribed, the grievance received in accordance with sub-section (3).

36. Prohibition on acts, actions contrary to the terms:

If any foreign investor or industry with foreign investment is found to have done any act contrary to this Act or the rules framed under this Act and the terms specified while giving approval for foreign investment, such approval may be revoked or it may be caused to rectify the error, upon fulfilling the procedures as prescribed.

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37. Monitoring and inspection of industries:

- (1) The officer designated by the Department may, as required, make monitoring and inspection of any industry with foreign investment.
- (2) The officer who makes monitoring and inspection in accordance with sub-section (1) shall, not later than three days after the date of completion of the monitoring and inspection, give a report to the Department, setting out the details inter alia whether or not the foreign investor or industry has done any act contrary to Section 36.
- (3) Other provisions relating to monitoring and inspection of the industry shall be as prescribed.

Chapter 7

Miscellaneous

38. Bilateral or multilateral investment agreement may be concluded:

The Government of Nepal may bring into foreign investment by concluding a multilateral or bilateral investment agreement with any foreign friendly country or international institution for the promotion of foreign investment.

39. Agreement may be made:

- (1) In making investment in any industry jointly by a Nepali investor and a foreign investor, a joint agreement concerning foreign investment may be made with respect to that investment, subject to this Act.
- (2) The agreement referred to in sub-section (1) shall provide for, inter alia, the terms of joint, distribution of profits earned from the investment and settlement of disputes relating to investment.

40. Settlement of disputes:

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- (1) If there arises any dispute between a Nepali investor and a foreign investor in relation to foreign investment, the Department may make it necessary facilitation in order that such a dispute is settled by the concerned parties through mutual discussions or negotiations.
- (2) If the dispute cannot be settled through the process referred to in sub-section (1) within a period of forty-five days after the dispute has arisen, and a joint investment or dispute settlement agreement exists between the parties to the dispute for the resolution of such a dispute, the dispute shall be settled in accordance with such an agreement.
- (3) The parties shall give information about the settlement of the dispute in accordance with sub-section (2) to the Foreign Investment Approving body not later than fifteen days of its settlement. Provided, that the parties shall not be bound to give information about on what terms and conditions such a settlement has been made.
- (4) If the agreement concluded between the parties in accordance with sub-section (2) has no provision about the settlement of disputes, such a dispute shall be settled by arbitration in accordance with the arbitration law of Nepal.
- (5) Any dispute arising in connection with any foreign investment shall be settled by arbitration in accordance with the prevailing Rules or Procedures of the United Nations Commission on International Trade Law (UNCITRAL), unless otherwise agreed upon by the parties to the dispute.
- (6) Arbitration to be conducted in accordance with this Section shall be held in Nepal, and substantive law of Nepal relating to arbitration shall apply. Provided, that with respect to the case referred to in sub-section (2), the provision contained in that sub-section shall apply.
- (7) If no agreement was made between the parties on the settlement of dispute prior to the arising of the dispute or if they realise that the agreement, if any made, is inadequate, the concerned parties may make an agreement for the settlement of a dispute even after the

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dispute has arisen. Information of the agreement so made shall be given to body registering the industry.

(8) Any dispute with respect to the agreement made in accordance with sub-section (7) may also be settled in accordance with this Section.

41. Electronic means may be used:

The foreign investment approving body may perform functions relating to approval for foreign investment in accordance with this Act and other acts and actions related thereto through recognised electronic means, in accordance with the prevailing law relating to electronic transactions.

42. Provisions relating to automatic approval process may be made:

(1) The Government of Nepal may, by notification in the Nepal gazette, provide services, such as registration of companies, registration of industries, approval of foreign investments in accordance with this Act and the prevailing law, through the automatic route in order to make the process of foreign investment simple, easy.

(2) Other provisions relating to the automatic route referred to in subsection (1) and the online system shall be as prescribed.

43. Validity period of approval of foreign investment:

(1) The approval of foreign investment given by the foreign investment approving body shall remain valid for a period until such investment remains in Nepal.

(2) Notwithstanding anything contained in sub-section (1), such approval shall be deemed to be ipso facto ineffective in the following circumstance:

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(a) In the event of failure, except for any reasonable reason, to commence bringing into Nepal of the amount of such foreign investment within two years after the date of the approval of foreign investment,

(b) In the event of transfer of cent percent ownership of an industry with foreign investment to a Nepali investor as a result of the sale of shares in the industry registered with the approval of foreign investment,

(c) In the event of the revocation of its registration as a result of a default on the part of the industry having got approval for foreign investment or the company establishing such an industry.

(3) Other provisions relating to the validity period of the approval of foreign investment shall be as prescribed.

44. Terms to be complied with:

A foreign investor shall comply with the terms as prescribed, in addition to the terms referred to, in this Act.

45. Production may be made upon making contract:

(1) Any industry with foreign investment may produce any part of its production or such subsidiary goods or services as required for the industry, except its main production, by a contract with another industry.

(2) Other provisions relating to production upon making contract shall be as prescribed.

46. Power of attorney may be given:

(1) A person who wishes to make foreign investment in accordance with this Act give a power of attorney to another person to perform any, some or all of the acts, actions required to be performed by that person. All acts, actions performed by the authorized person in

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accordance with the power of attorney shall be deemed to have been performed by the investor himself or herself.

(2) In order to perform the act in accordance with a power of attorney given in accordance with sub-section (1), such a power of attorney shall be notarized and provided to the foreign investment approving body. The foreign investment approving body may, if it so considers necessary, look at the original of such a power of attorney.

(3) A person who is authorised in accordance with sub-section (1) may not delegate the authority conferred on him or her to another person.

(4) The person who gives a power of attorney may, at any time, withdraw the power of attorney given by him or her. The power of attorney shall become invalid from the date on which the person giving such power of attorney registers the information of such withdrawal of the power of attorney with the foreign investment approving body.

(5) Other provisions relating to the giving of power of attorney shall be as prescribed.

47. Delegation of powers:

The Board or Department may, as required, delegate some powers out of the powers conferred on it in accordance with this Act or the rules framed under this Act to any body or officer of the Government of Nepal.

48. Foreign investment in any industry registered in Province:

(1) If foreign investment or transfer of technology is to be made in any industry registered by the Government of a Province in accordance with the prevailing Federal or Provincial law, approval of the Department shall be obtained in accordance with this Act.

(2) The certificate of registration of industry with the Province and recommendation of the Provincial ministry looking after the matters

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of industry, among other things, shall be submitted in order to obtain the approval in accordance with sub-section (1).

(3) Other provisions relating to foreign investment in an industry registered in a Province shall be as prescribed.

49. Application of prevailing law:

The matters contained herein shall be governed by this Act and the other matters shall be governed by the prevailing law relating to industrial enterprises and other prevailing law.

50. Power to make alteration in the Schedule:

The Government of Nepal may, by notification in the Nepal gazette, make necessary alteration in the Schedule.

51. Power to make rules:

The Government of Nepal may frame necessary rules for the implementation of this Act.

52. Power to make and enforce Directives, Procedures or Standards:

The Government of Nepal may, without prejudice to this Act and the generality to the Regulation framed under this Act, make and enforce necessary Directives, Procedures or Standards.

53. Repeal and saving:

(1) The Foreign Investment and Technology Transfer Act, 1992 (2049) is hereby repealed.

(2) The acts and actions performed under the Foreign Investment and Technology Transfer Act, 1992(2049) shall be deemed to have been performed under this Act.

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Schedule (Relating to sub-section (2) of Section 3)

Industries or Businesses Restricted for Foreign Investment

1. Poultry farming, fisheries, bee-keeping, fruits, vegetables, oil seeds, pulse seeds, milk industry and other sectors of primary agro-production,
2. Cottage and small industries,
3. Personal service business (hair cutting, tailoring, driving etc.),
4. Industries manufacturing arms, ammunition, bullets and shell, gunpowder or explosives, and nuclear, biological and chemical (N.B.C.) weapons; industries producing atomic energy and radioactive materials,
5. Real estate business (excluding construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service,
6. Travel agency, guide involved in tourism, trekking and mountaineering guide, rural tourism including homestay,
7. Business of mass communication media (newspaper, radio, television and online news) and motion picture of national language,
8. Management, account, engineering, legal consultancy service and language training, music training, computer training, and
9. Consultancy services having foreign investment of more than fifty-one percent.

(Note: For all legal purposes please use Nepali version of the Act published in the Gazette of the Nepal Government.)

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