

A Proposal

for

Foreign Investment Bill of Nepal-2019

by

Nepal Policy Institute

Non-Resident Nepali Association



27th February 2019



Nepal Policy Institute

Non-Resident Nepali Association

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Dr. Narayan Raj Poudel
National Planning Commission,
Government of Nepal

Dear Dr. Poudel,

I am writing this to you as our Nepal Policy Institute (NPI) focal point at National Planning Commission.

As requested to NRNA earlier this month, I have the honour to present our recommendations and proposals concerning Foreign Direct Investment Bill for consideration of the Government of Nepal (GoN). I send herewith the following three documents which explain and represent our clear recommendations and proposals:

- (i) Summary description of and rationale for the proposed new Foreign Investment Bill;
- (ii) The proposed draft Foreign Investment Bill of Nepal - 2075/2019; and
- (iii) The Rules and Regulations for implementing the proposed Investment Bill of Nepal 2075/2019.

These proposals are the result of consultations within Nepali diaspora scholars, economists and business managers in North America, Europe, Australia, Japan, Thailand and Singapore and reflect the best practices in South-East Asia which is a hub of economic growth of this century.

We believe that Nepal's foreign investment laws and environment should be open, competitive and attractive than countries in Asia if we are to attract a sustained level of foreign direct investment in Nepal. In that direction, our proposal includes the following key progressive elements:

- Non-Nepali national, Nepali diaspora and people of Nepali-origin will be treated equally in the matter of investment. Investors need to be allowed for making investments with 100% ownership of enterprises. (Section 6,7);
- Investments will be approved and coordinated by the Investment Board of Nepal under one window within seven (7) working days. This will facilitate investors reducing the hassle of visiting different Ministries/Departments one after another, for processing, registration and approval of foreign investment. (Section 5,6,7);
- An enterprise with paid-in equity capital less than US\$150,000 is reserved to Nepali nationals only (as mentioned in the Areas Prohibited for Foreign Investment List); however, but if the business enterprise involves transfer of technology and provides

direct employment of twenty (20) Nepali, then a non-Nepali can invest and own with paid-in capital of US\$100,000 to generate local employment. (Section 8,15);

- Former Nepali citizens and Nepal-origin individual will have the same investment rights as that of a Nepali citizen. (Section 9,10);
- Nepal-born former Nepali national can own 5,000 square meters of urban land and four (4) hectares of rural land for business/enterprise purposes. (Section 10);
- All investments must comply with Environmental standards. (Section 11);
- No government agency shall be allowed to nullify the provisions granted under the Foreign Investment Bill. (Section 12);
- No investment will be expropriated or confiscated by administrative measures in the operation of foreign owned enterprises. (Section 12);
- Currently operating enterprises will continue to operate under the previously existing rules and regulations at the time of effective date of the proposed Foreign Investment Bill. (Section 15);
- Investor will be allowed to repatriate foreign currency investment, profit from investment, principal of any loan obtained during the course of business operations. (Section 16);
- Dispute settlement can be conducted outside Nepal (i.e. Singapore, Switzerland or U.K. (Section 17);
- Transfer of foreign technology will be part of capital contribution to enterprise. (Section 18);
- Machineries, equipment, plant and advanced technology required to establish and smooth running of enterprise/industry will be exempted from import taxes and customs duties. (Section -18);
- Enterprises with foreign owned capital and parties to business co-operation contract shall have the right to autonomy in conducting business/enterprise in accordance with the objectives stipulated in the investment license permit. (Section – 19);
- Investor with foreign owned capital can purchase foreign currency for business purposes from commercial banks. (Section 20);
- The Foreign Investment and Technology Transfer Act of 2049 will be repealed and replaced by the proposed Foreign Investment Bill of Nepal – 2075/2019. (Section 21);
- Non-Nepali investors can invest in enterprise utilizing raw material from depleting natural resources with paid-in equity capital of no less than US500,000. (Rule X Section 1 (c);



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- Non-Nepali investor and his/her family will be issued a minimum period of one-year investor visa with multiple entry/exit and will not be required to be registered with Police as foreigner living in the country. (Section 21 and Rule XIX)

NPI sincerely desires to see and contribute to the overall economic growth and Nepal's prosperity through foreign direct investments.

I hope that our proposal receives positive attention by policy shapers and decision makers in the Government of Nepal.

I kindly request you to urgently transmit the documentation to the Chairman of the National Planning Commission and other relevant ministries and authorities for urgent attention. Now that a draft bill has already gone to the parliament as reported by media, I request you also to urgently send our proposal to the relevant committees and processes in the parliament.

I would like to inform you that we will post our proposals sent to you in our website both to express our transparency as well as to offer the information as public good to others.

We remain available and committed to any further explanation, advice or support you may need towards getting a new progressive Foreign Investment Bill passed before the forthcoming International Investment Summit. Please do not hesitate to contact me, for I remain available.

Sincerely

A handwritten signature in black ink, appearing to read 'Khagendra Raj Dhakal'.

(Khagendra Raj Dhakal)
Chair
Nepal Policy Institute

Summary description of and rationale for the proposed Foreign Investment Bill of Nepal – 2075 BS (2019 AD)

Why 'Change' Foreign Investment Law?

Economic Investment environment has been rapidly changing in recent past and investors are looking around for better investment opportunity, larger consumer market for unfettered flow of products and services, and reasonable rate of return on investments. Investment laws must take these key elements into consideration by creating a conducive climate for foreign direct investment. Stable economic and political environment and clarity in foreign policy direction are fundamental to attracting external investments. Currently, global market trend is appearing somewhat shrinking with rising protectionism. Entrepreneurs find operating environment challenging and are confronted with cut-throat market economy. There are still opportunities if we focus attention to the right source/destination markets. There is, however, no automatic flow of foreign money into Nepal (as nationalists assume) without pragmatic approaches to dealing with foreign direct investment challenges. Changes in the proposed investment bill of Nepal should take this scenario into full consideration.

There are competing economies in Asia, and ASEAN leading the way forward. Due to continuing trade dispute between USA and China the new trend in foreign investment is shifting towards the South East Asia. Opportunities exist for export market in growing economies and emerging markets, but exporters need to be smarter, cost effective and quality competitive. Investors are looking for favourable legal regime and more positive business operating environment. Poor physical infrastructure and connectivity, unreliable energy and water supply combined with the absence of efficient and swift transport infrastructure for access to overseas market are the distinguishing characteristics of Nepal's business environment. These factors also heavily weigh in foreign investor's decision making. This is where Nepal falters and is unable to attract foreign investment.

International entrepreneurs are seen moving into new destinations in Vietnam, Cambodia and Laos than others in Asia and in countries in Africa, particularly Rwanda, Ethiopia and Kenya. Investors will move to places where they find investments safer and competitive advantages, wider market opportunities and stable Supply-Chain setting. Nepal is an insignificant market in the current liberalized global environment, with small urban middle-class and limited purchasing power of Nepalese consumers. This implies that Nepal is not a highly favorable destination for large industrial establishments. Government of Nepal's policy, thus, should encourage all investors, both non-Nepali as well as Nepalis without prejudice, to invest freely in small and medium enterprises (SMEs). This can help improve, domestic employment, balance of payments situation and give sense of economic security. Nepal government needs to do away with the large list of "the Areas Prohibited for Foreign Investment" from the Foreign Investment Act for attracting external investments in subsistence sectors as well.

'Change' for What?

A large share of Nepal's import from India is consumer goods including basic food items. This has created serious vulnerability leading to food and economic insecurity and increased dependency on imports of staple items. Nepal is vulnerable to volatilities of all sorts, be that in market opportunity or size, consumer base, accessibility, labour, political misgivings, corruption and faltering governance being the major elements.

The current Investment Act of Nepal restricts foreign investment on variety of areas contributing to imbalance between consumer demand and supply of agricultural produce. This is one of the major factors contributing to rise in imports of staple food items from India and other household items from China. Economically active-age-group find attractive to migrating elsewhere for employment for livelihood and better wage than available in rural Nepal. This may have contributed to low level of capital mobilization for investment and employment in small and medium size enterprises (SMEs). SMEs are the back bone for stable national economy. This sector provides general economic security. The business investment climate and managing nation's economy must, thus, reform with sense of realism and open mind is necessary.

Investment laws relating to Foreign Investment and Technology Transfer Act and Industrial Enterprises Act, both enacted during 2049 (1992), somewhat appears restrictive with several investment areas with long list of '*Areas Prohibited for Foreign Investment List*'. These laws have not spurred high investment, contributing to long term sustainable economic growth. One of the reasons may be that small and medium size industries (with high capital requirements) appear to be reserved to Nepali nationals thus limiting foreign direct investment. Parallely, industrial investment performance of the last two decades indicates that such a trend will continue in future unless there is significant changes in investment climate. Therefore, it is necessary to revisit the existing laws beginning with Foreign Investment and Technology Transfer Act and other closely related laws. The revisions need to mainly focus on simplifying regulating measures while getting rid of restrictive measures and encourage foreign direct investors' participation in all economic areas.

Nepal is facing a severe problem of rising trade deficit with India, for imports are rising disproportionately rapidly while exports have plummeted in recent years. Imports of food items and petroleum products have increased much more than before. This is leading to a situation of economic crisis. In view of this, excluding defense and national security, the draft proposal for foreign investment bill recommends that foreign investment areas should be open to all economic sectors.

Such a provision could increase foreign investment on the one hand and decrease the trade deficit as well as increase the production of some essential items like food, making the country less reliant on the imports of basic items.

The Proposed new Foreign Investment Bill is expected to encourage investors to invest in small and medium size business enterprises (SMEs) that will significantly:

- ✓ increase the supply of basic consumable items including food;
- ✓ expand livelihood and employment opportunities for Nepalis;
- ✓ enhance economic value of farm products;
- ✓ promote the welfare of Nepali consumers;
- ✓ expand labour intensive activities and efficient utilization of materials and natural resources;
- ✓ decrease imports and thus trade deficit;

- ✓ increase quality and volume of exports and their access to domestic and foreign markets;
- ✓ transfer relevant technologies in agriculture, industry and support services;
- ✓ Increase construction of infrastructure facilities and industrial production establishments.

How do we 'change' and with what 'strategy'?

The government should first restructure the National Planning Commission (NPC). It is saddled with several shortcomings and must be revamped with expanded mandate of pro-active lead role. NPC was established during the time of Central Planning under command economy. It was fashionable during the Cold War era when world economies were divided into two major political blocks of "Capitalism" and "Communism". Both have serious shortcomings. It is now generally believed neither philosophies can offer equitable solutions to addressing growing economic-divides, resolving poverty issues and sustaining quality of life throughout all economies. This is mainly due to disruptions caused by rapidly advancing and expanding technologies and inability of economies to adapt concomitant changes occurring from speed of development in information technology.

China has prudently demonstrated pragmatic approach to way forward without surrendering its values and national economic security. India is following the suit despite hiccups and sticking to ***change***. Nepal's economic policy and practice of ***'doing business'*** need pragmatic adjustment to new realism otherwise population of this poverty-stricken nation will pay irrecoverable economic price. Given this, and against changing world economic environment, political climate, and global investment and market trends impacted by innovation, rapidly advancing technology and upsurge in automation Nepal must show its firm resolve to reforming economic landscape, setting new conducive investment and work environment, while augmenting institutional capability adapting flexible policy strategy and pro-active monitoring and implementation mechanism. NPC has not met these standards for various reasons. The new national authority (***National Economic Policy Monitoring Authority***) must rise above the call of the day and perform beyond producing planning in papers.

Against the above backdrop, following suggestions are advanced:

- (1) Revamp the National Planning Commission (NPC) with new mandate and name ***National Economic Policy Monitoring Authority, (NEPMA)***. This institution should be organized with new spirit of action-oriented dynamism and engage into delivery of achievable outputs. NEPMA should be responsible for developing economic policy and monitoring and implementation of investment programs and economic enterprises. The "***National Economic Policy Monitoring Authority, or (NEPMA)***" as proposed will, however, continue to prepare and guide mega projects of high export potentials in addition to regular policy framework and performance review of implementing and collaborating partners, and government and non-governmental agencies. NEPMA should assume central role in developing economic policy, advising government and implementing pragmatic strategies.

- (2) All foreign investments will be approved and registered by Investment Board of Nepal within seven working days.
- (3) Repeal (i) the present *Investment and Technology Transfer Act* and replace it with the proposed draft Foreign Investment Bill 2075/2019 shared with the Government of Nepal for consideration and action before the planned International Investment Summit in March 2019; and (ii) approve the proposal for the Implementing Rules and Regulations for the proposed Foreign Investment Bill of Nepal – 2075/2019.

Expected 'change' through Foreign Direct Investment Bill?

(1). Investors can invest and own 100% in enterprises, including SMEs, except for some Areas Prohibited for Foreign Investment such as national and defense/security related products and services, respecting the provisions of the Constitution, and other relevant laws. This should be reviewed by constitutional lawyers to ascertain whether there are constitutional limits to foreign direct investment. This will ensure letter and spirit of the proposed foreign investment Bill confirming that the bill is not in conflict with the constitutional provisions. Nepal needs to follow the global economic "trends" taking into the ground realities. In essence, Nepal should therefore have a more liberal investment policy as compared to its two big neighbours as well as ASEAN countries in order to attract foreign investment.

(2). Nepal ranks at very low level in "doing business" global environment index. This rank can be improved by addressing the issue related to reforming foreign investment laws, money laundering and drug peddling.

(3). In view of the potential for cross-border trade with China (context Belt and Road), Nepal could benefit as a transit country for export utilizing dry port facility, export of produces from Export Processing Zone and possible transit supply-chain warehousing for third country export.

(4). Approval mechanism is proposed at the provincial level in view of the federal structure of the governance.

(5). Nearly seven or eight million Nepali live and work outside of Nepal, and the proposed investment bill will allow them to invest freely in all productive areas of economy, and forge partnerships with non-Nepali nationals.

(6). Current Foreign Investment and Technology Transfer Act of 2049/1992 is focused on foreign currency inflow. It is not linked to employment generation. Foreign Investment in business enterprise should be, where feasible, tied up with job creation and technology transfer. This shortcoming is addressed in the draft proposal.

(7). Use of terminology "foreigner" is dropped and 'non-Nepali nationals' is used to include wider diaspora (including Nepal-born former nationals and people of Nepali-origin). Use of terminology "Non-Resident Nepali" is not used for this is restrictive in its definition and controversial in some instances.

(8). The new *National Economic Policy Monitoring Authority (or NEPMA)* will review and update annually economic sectors/areas for foreign investment, develop policy guidelines on investment, and regularly monitor implementation of programs and projects.

(9). Banking and finance matters are to be governed by Nepal Rastra Bank and the necessary rules and regulations are to be developed separately. This is to separate banking and monetary market functioning from executive and political interferences. Healthy banking and monetary practices are integral part of creating climate of business confidence and growth in investment market.

Proposed Foreign Investment Bill introduces following provisions:

- Non-Nepali national, Nepali diaspora and people of Nepali-origin will be treated equally in the matter of investment. Investors need to be allowed for making investments with 100% ownership of enterprises. (Section 6,7);
- Investments will be approved and coordinated by the Investment Board of Nepal under one window within seven (7) working days. This will facilitate investors reducing the hassle of visiting different Ministries/Departments one after another, for processing, registration and approval of foreign investment. (Section 5,6,7);
- An enterprise with paid-in equity capital less than US\$150,000 is reserved to Nepali nationals only (as mentioned in the Areas Prohibited for Foreign Investment List); however, but if the business enterprise involves transfer of technology and provides direct employment of twenty (20) Nepali, then a non-Nepali can invest and own with paid-in capital of US\$100,000 to generate local employment. (Section 8,15);
- Former Nepali citizens and Nepal-origin individual will have the same investment rights as that of a Nepali citizen. (Section 9,10);
- Nepal-born former Nepali national can own 5,000 square meters of urban land and four (4) hectares of rural land for business/enterprise purposes. (Section 10);
- All investments must comply with Environmental standards. (Section 11);
- No government agency shall be allowed to nullify the provisions granted under the Foreign Investment Bill. (Section 12);
- No investment will be expropriated or confiscated by administrative measures in the operation of foreign owned enterprises. (Section 12);
- Currently operating enterprises will continue to operate under the previously existing rules and regulations at the time of effective date of the proposed Foreign Investment Bill. (Section 15);
- Investor will be allowed to repatriate foreign currency investment, profit from investment, principal of any loan obtained during the course of business operations. (Section 16);
- Dispute settlement can be conducted outside Nepal (i.e. Singapore, Switzerland or U.K. (Section 17);
- Transfer of foreign technology will be part of capital contribution to enterprise. (Section 18);
- Machineries, equipment, plant and advanced technology required to establish and smooth running of enterprise/industry will be exempted from import taxes and customs duties. (Section -18);

- Enterprises with foreign owned capital and parties to business co-operation contract shall have the right to autonomy in conducting business/enterprise in accordance with the objectives stipulated in the investment license permit. (Section – 19);
- Investor with foreign owned capital can purchase foreign currency for business purposes from commercial banks. (Section 20);
- The Foreign Investment and Technology Transfer Act of 2049 will be repealed and replaced by the proposed Foreign Investment Bill of Nepal – 2075/2019. (Section 21);
- Non-Nepali investors can invest in enterprise utilizing raw material from depleting natural resources with paid-in equity capital of no less than US500,000. (Rule X Section 1 (c);
- Non-Nepali investor and his/her family will be issued a minimum period of one-year investor visa with multiple entry/exit and will not be required to be registered with Police as foreigner living in the country. (Section 21 and Rule XIX)

The Global Knowledge Convention organized by Non-Resident Nepali Association (NRNA), held in Kathmandu in October 2018, made a wide range of recommendations to the government for reform in areas covering banking, finance, bankruptcy and insolvency, dispute settlement, brokerage and wealth management, income tax, double taxation, industrial policy etc. Several of these recommendations do not fall directly under the Foreign Investment Bill. These should, however, be studied and considered within the framework of applicable relevant laws. Nonetheless, some recommendations relevant to foreign investments have been incorporated in the proposed Investment Bill.

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**Draft Proposal
For
Foreign Investment Bill of Nepal – 2075 BS (2019 AD)**

Section-1: Title. – This Bill (Act) shall be known as the “**Foreign Investments Bill (Act) of Nepal – 2075 BS (2019 AD)**”.

Section -2: Policy Declaration – The declared policy of the Federal Democratic Republic of Nepal is to attract, promote and welcome productive investments from foreign as well as Nepali-origin individuals, partnerships, corporations, and governments, including their subsidiaries in activities which significantly contribute to national industrialization and socio-economic development leading to economic security to the extent that foreign investment shall be allowed to foreign nationals and Nepali investors.

Foreign investments shall be encouraged in enterprises that significantly

1. expand livelihood and employment opportunities for Nepalis;
2. enhance economic value of farm products;
3. promote the welfare of Nepali consumers; expand labour intensive activities and efficient utilization of materials and natural resources;
4. increase quality and volume of exports and their access to domestic and foreign markets;
5. transfer relevant technologies in agriculture, industry and support services.
6. Production of exports;
7. Increase construction of infrastructure facilities and industrial production establishments.
8. increase the supply of basic consumable items including food;
9. decrease imports and thus trade deficit;

Foreign investments shall be welcome as a supplement to Nepali capital and technology in those enterprises serving domestic and foreign markets.

Within the framework of this Bill there are no restrictions on the extent of foreign ownership of export enterprises. In domestic market enterprises, foreigners can invest as much as one hundred percent (100%) equity except in areas included in the **Areas Prohibited For Foreign Investment list**. Foreign owned firms catering mainly to the domestic market shall be encouraged to undertake measures that will gradually increase Nepali participation in their businesses by taking in Nepali partners, electing competent Nepali to the board of directors, implementing transfer of technology to Nepalis generating more employment for the economy and enhancing skills of Nepali workers.

Section – 3: Definitions. – In this Bill

(a) the term “**Nepali National**” shall mean a citizen of Nepal or a domestic partnership or association wholly owned by citizens of Nepal; or a corporation organized under the laws of the Nepal of which at least fifty-five percent (55%) of the capital stock outstanding and entitled to vote is owned and held by citizens of Nepal or a corporation organized abroad and registered as doing business in Nepal with one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Nepali or a trustee of funds for pension or crowd sources funding or other employee retirement or separation benefits, where the trustee is a Nepali national and at least fifty-five percent (55%) of the fund will

accrue to the benefit of Nepali nationals: Provided, that where a corporation and its non-Nepali stockholders own stocks in a Securities Board of Nepal (SEBON) and Nepal Stock Exchange registered enterprise, at least fifty-five percent (55%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of Nepal and at least fifty-five percent (55%) of the members of the Board of Directors of each of both corporations must be citizens of Nepal, in order that the corporation shall be considered a Nepali national;

(b) the term "**investment**" shall mean equity participation in any enterprise organized or existing under the laws of Nepal;

(c) the term "**foreign investment**" shall mean an equity investment made in the form of foreign exchange and/or other assets transferred to Nepal and duly registered with the Nepal Rastra Bank which shall assess and appraise the value of such assets other than foreign exchange;

(d) the phrase "**doing business**" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in Nepal or who in any calendar year stay in the country for a period or periods of one calendar year or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in Nepal; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, that the phrase "**doing business**" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in Nepal which transacts business in its own name and for its own account;

(e) the term "**export enterprise**" shall mean an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports fifty-five percent (55%) or more of its output, or wherein a trader purchases product domestically and exports fifty-five percent (55%) or more of such purchases;

(f) the term "**domestic market enterprise**" shall mean an enterprise which produces goods for sale, or renders services to the domestic market entirely or if exporting a portion of its output fails to consistency export at least fifty-five percent (55%) thereof; and

(g) the term "**Areas Prohibited For Foreign Investments List**" or "**Prohibited List**" shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty-five percent (45%) of the equity capital of the enterprises engaged therein.

Section – 4: Scope: This Bill (Act) shall not apply to banking and other financial institutions which are governed and regulated by the Banking Regulations and other laws under the supervision of the Nepal Rastra Bank.

Section – 5: Registration of Investments:

1. Without need of prior approval, investor can, unless otherwise not disqualified by law may, upon registration with the Investment Board of Nepal in the case of single proprietorships, do business as defined in Section (3d) of this Bill or invest in a domestic enterprise up to one hundred percent (100%) ownership of its capital, unless participation of non-Nepali nationals in the enterprise is limited to a smaller percentage under the provisions of this Bill;
2. The Investment Board of Nepal shall not impose any limitations on the extent of foreign ownership in an enterprise additional to those provided in this Bill;
3. Provided, however, that any enterprise seeking to avail of incentives under the law must apply for registration with the Investment Board of Nepal, which shall process such application for registration in accordance with the criteria for evaluation prescribed by law:
4. Provided, finally, that an investor intending to engage in the same line of business as an existing joint venture, in which he/she or his/her majority shareholder is a substantial partner, must disclose the fact and the names and addresses of the partners in the existing joint venture in his application for registration with the Investment Board of Nepal:
5. During the transitory period as provided in Section 15 hereof, the Investment Board of Nepal shall disallow registration of the applying non-Nepali investor if the existing joint venture enterprise, particularly Nepali partners therein, can reasonably prove they are capable to make the investment needed for the domestic market activities to be undertaken by the competing applicant.
6. Upon effective date of this Bill, Investment Board of Nepal shall issue registration of any enterprise applying under this Bill within **seven (7) working days** upon submission of completed requirements.

Section 6: Foreign Investment in Export Enterprises. – Foreign investment by an investor in export enterprises whose products and services do not fall within **Lists A and B of the Areas Prohibited For Foreign Investment List** provided under Section 8 hereof can acquire hundred percent (100%) ownership of foreign owned capital.

Export enterprises shall register with the Investment Board of Nepal and submit the reports that may be required to ensure continuing compliance of the export enterprise with its export requirement.

The Investment Board of Nepal shall advise any export enterprise that fails to meet the export ratio requirement. The Investment Board of Nepal shall thereupon order the non-complying export enterprise to reduce its sales to the domestic market to not more than forty percent (40%) of its total production; failure to comply with such order, without justifiable reason, shall subject the enterprise to cancellation of registration, and/or the penalties provided in Section 14 hereof.

Section – 7: Foreign Investment in Domestic Market Enterprises. Non-Nepali national can acquire one hundred percent (100%) foreign owned capital of domestic market

enterprises unless foreign ownership therein is prohibited or limited by the Constitution existing law or the Areas Prohibited For Foreign Investment List under Section 8 hereof.

Section -8: List of Investment Areas Reserved to Nepali Nationals (Areas Prohibited For Foreign Investment List). – The Areas Prohibited For Foreign Investment List shall have two (2) components lists; A, and B.

(a) **List A** shall enumerate the areas of activities reserved to Nepali nationals by mandate of the Constitution and specific laws.

(b) **List B** shall contain the areas of activities and enterprises regulated pursuant to law:

(1) which are defense-related activities, requiring prior clearance and authorization from Ministry of Defense to engage in such activity, such as the manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials; unless such manufacturing or repair activity is specifically authorized, with a substantial export component, to a non-Nepali national by the Ministry of Defense; or

(2) which have implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses and massage clinics.

(3) Enterprises which fall under the description in Sub-section (1) and (2) of the Areas Prohibited For Foreign Investment List -B, with paid-in equity capital less than one hundred fifty thousand US dollars (US\$150,000) are reserved to Nepali nationals, Provided that if: (i) they involve advanced technology as determined by the Department of Education, Science and Technology or (ii) they employ at least twenty (20) direct employee, then a minimum paid-in capital of one hundred thousand US dollars (US\$100,000) shall be allowed to non-Nepali nationals.

(4) Amendments to List B may be made upon recommendation of the Ministry of Defense, or the Ministry of Health, or the Ministry of Education, Science and Technology, endorsed by the **National Economic Policy Monitoring Authority (NEPMA)** new organization proposed – revamping National Planning), approved by the Prime Minister.

(5) “**Areas Prohibited For Foreign Investment List**” established in Section - 15 hereof shall be replaced at the end of the transitory period by the first published Prohibited List to be formulated and recommended by National Economic Policy and Monitoring Authority (NEPMA), following the process and criteria provided in Sections 8 of this Bill. The first Prohibited List shall be published not later than sixty (60) days before the end of the transitory period provided in said section and shall become immediately effective at the end of the transitory period. Subsequent the Areas Prohibited Foreign Investment Lists shall become effective fifteen (15) days after publication government Gazette and one local newspaper of general circulation in Nepal: Provided, however, that each Areas Prohibited For Foreign Investment List shall be prospective in operation and shall in no way affect foreign investment existing on the date of its publication.

(6) Amendments to List B after publication of the first Areas Prohibited For Foreign Investment List at the end of the transitory period shall not be made more often than once every two (2) years.

Section – 9: Investment Rights of Nepal-born former Nepali citizen. – For the purpose of this Bill, Nepal-born former national of Nepali-origin shall have the same investment rights of a Nepali citizen without any bias and prejudice.

These rights shall not extend to activities reserved by the Constitution, including (1) the exercise of profession; (2) in defense related activities under Section 8 (b) hereof. Unless specifically authorized by the Ministry of Defense;

Section -10: Other Rights of Nepal-born former Nepali Citizen Pursuant to the Provisions of the Constitution.– (1) Any Nepal-born former national of Nepali-origin who has lost his/her Nepali citizenship and who has the legal capacity to enter into a contract under Nepali laws may be a transferee of a private land up to a maximum area of five thousand (5,000) square meters in the case of urban land or four (4) hectares in the case of rural land to be used by him for business or other purposes. In the case of married couples, one of them may avail of the privilege herein granted: Provided, that if both shall avail of the same, the total area acquired shall not exceed the maximum herein fixed.

(2) In the case the transferee already owns urban or rural land for business or other purposes, he/she shall still be entitled to be a transferee of additional urban or rural land for business or other purposes which when added to those already owned by him/her shall not exceed the maximum areas herein authorized.

(3) A transferee under this Bill may acquire not more than two (2) plots which should be situated in different municipalities or cities anywhere in Nepal: Provided, that the total land area thereof shall not exceed five thousand (5,000) square meters in the case of urban land or four (4) hectares in the case of rural land for use by him/her for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land and vice versa.

Section – 11: Compliance with Environmental Standards. – All industrial enterprises regardless of nationality of ownership shall comply with existing rules and regulations to protect and conserve the environment and meet applicable environmental standards. Further,

Section -12: Consistent Government Action. – No agency, instrumentality or political subdivision of the Government shall take any action in conflict with or which will nullify the provisions of this Bill, or any certificate or authority granted hereunder. During the course of investment in Nepal, capital and other lawful assets of investors shall not be requisitioned or expropriated by the government’s administrative measures, enterprises with foreign owned capital shall not be nationalized.

Section –13: Implementing Rules and Regulations. – National Economic Policy Monitoring Authority (NEPMA), in consultation with the Investment Board of Nepal and other government agencies concerned, shall issue the rules and regulations to implement this Bill within thirty (30) working days after its effective date.

Section -14: Administrative Sanctions. – (1) A person who violates any provision of this Bill or of the terms and conditions of registration or of the rules and regulations issued pursuant thereto, or aids or abets in any manner any violation shall be subject to a fine not exceeding five hundred thousand rupees (Rs500,000).

(2) If the offense is committed by a juridical entity, it shall be subject to a fine in an amount not exceeding ½ of 1% of total paid-in capital but not more than five million rupees (Rs5,000,000). The chairperson and/or officials responsible therefor shall also be subject to a fine not exceeding five hundred thousand rupees (Rs500,000)

In addition to the foregoing, any person, firm or juridical entity involved shall be subject to forfeiture of all benefits granted under this Bill.

The Investment Board of Nepal shall have the power to impose administrative sanctions as provided herein for any violation of this Bill or its implementing rules and regulations.

Section -15: Transitory Provisions. – Prior to effective date of the implementing Rules and Regulations of this Bill provisions of the previously existing implementing rules and regulations shall remain in force.

During the initial transitory period of twelve-months (12) months after issuance of the Rules and Regulations to implement the Bill, the Areas Prohibited For Foreign Investment List shall consist of the following: **A.**

List A:1. All areas of investment in which foreign ownership is limited by mandate of Constitution and specific laws.

B. List B: (1) Manufacture, repair, storage and/or distribution of firearms, ammunition, lethal weapons, military ordnance, explosives, pyrotechnics and similar materials required by law to be licensed by and under the continuing regulation of the Ministry of Defense; unless such manufacturing or repair activity is specifically authorized, with substantial export component, to a non-Nepali national by Minister of Defense;

(2) Manufacture and distribution of dangerous drugs; all forms of gambling; nightclubs, bars, beerhouses, dance halls; sauna and steam bathhouses, massage clinics and other like activities regulated by law because of risks they may pose to public health and morals;

(3) Small and medium-sized domestic market enterprises with paid-in equity capital less than one-hundred fifty thousand US dollars (US\$150,000), reserved to Nepali nationals: Provided, that if: (1) they involve advanced technology as determined by the Ministry of Education, Science and Technology or (2) they employ at least twenty (20) direct employee, then a minimum paid-in capital of one hundred thousand US dollars (US\$100,000) shall be allowed to non-Nepali nationals.

Section - 16. Repatriation of Fund:

(1) Investor making foreign currency investment on approved enterprise in Nepal shall be allowed to repatriate the invested capital in foreign currency out of Nepal and, net profit derived from business operations and other income from dividends received from the enterprise thereof;

(2) Investor is allowed to transfer abroad the principal of and any foreign loan obtained during the course of business operations;

(3) Investors shall be allowed to transfer in foreign currency amount up-to twenty thousand US Dollars through commercial banks in Nepal without prior approval of Nepal Rastra Bank

for business purposes. However, transferred amount should in no way exceed twenty-five (25%) percent of the total amount invested in foreign currency amount in any given calendar year. Rules governing this should be formulated by Nepal Rastra Bank permitting commercial banks to effect such transactions.

(4) Foreigners working in Nepal for enterprises with foreign owned capital or parties to business cooperation contract shall, after payment of income taxes as stipulated by law, be permitted to transfer abroad their lawful incomes.

Section – 17: Settlement of Dispute: (1) If any dispute arises between a non-Nepali investor and Nepali investor or the concerned enterprise, the concerned parties shall first be required to settle the dispute through Investment Board of Nepal;

(2) When the parties fail to settle the dispute as per (1) the dispute shall be referred to arbitration in Nepali Court. The Laws of Nepal shall be application and the arbitration will be held in Kathmandu;

(3) However, if for any reason any party to the dispute is dissatisfied with the ruling of the Court in Nepal the arbitration under the World Trade rules(?) can be held in Singapore or Switzerland or the United Kingdom for a final resolution of dispute.

(4) Notwithstanding anything contained in Sub-section (1), (2) and (3) above, dispute regarding foreign investment made in the enterprises with investment as prescribed may be settled as mentioned in the foreign investment agreement.

Section – 18: Technology Transfer. (1) The transfer of foreign technology to Nepal in foreign investment projects may be carried out in the form of capital contribution of the value of technology purchases made on the basis of business contract;

(2) Machineries, equipment, plant and advanced technology required for the establishment and running of enterprise/industry will be exempted from import and customs duties and taxes.

Section – 19: Rights to Autonomy. Enterprises with foreign owned capital and parties to business co-operation contracts shall have the right to autonomy in conducting their businesses in accordance with the objectives stipulated in the investment licence; to import equipment, machinery, materials, and means of transport; to export and sell either directly, or through an agent, their products in order to implement their investment projects in accordance with the law.

Enterprises with foreign owned capital and parties to business co-operation contracts should give priority to purchasing equipment, machinery, materials, and means of transport in Nepal if the technical and commercial conditions are similar.

Section – 20: Foreign Currency Purchases from Commercial Banks. Enterprises with foreign owned capital and parties to business co-operation contracts may purchase foreign currency from commercial banks to meet the demand of their current transactions and other permitted transactions in accordance with the provisions of the law on foreign exchange control.

The Government of Nepal shall guarantee the foreign currency balance of especially important projects investing in accordance with the programs of the Government.

Section – 21: Investor Visa. Investor who meets requirements of as an investor under the proposed Bill will be issued one calendar year’s visa with multiple entries until the investment is retained in Nepal. Investors’ family members will also be issued with residential visa of no less period than the principal investor. Such visas may be renewed annually.

Section -22: Repealing Clause. – The Foreign Investment and Technology Transfer Act of 2049 (1992) of Nepal and Amendments of 2052 and 2057 (??) are hereby repealed and replaced by this Bill from the effective date of the Bill.

All other laws or parts of laws inconsistent with the provisions of this Bill are hereby repealed or modified accordingly.

Section -23: Separability Clause. – If any part or section of this Bill is declared unconstitutional for any reason whatsoever, such declaration shall not in any way affect the other parts or sections of this Bill.

Section –24: Effective date. – This Bill take effect from fifteen (15) days after approval and publication in the government Gazette and one newspapers of general circulation in Nepal.

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**Draft Proposal for The Implementing Rules and Regulations
For
(draft) Foreign Investment Bill of Nepal – 2075/2019**

Rule I

Definition of Terms

(a). For the purpose of this Bill shall refer to "**The Implementing Rules and Regulations to Promote Foreign Investments, Prescribe the Procedures for Registering Enterprises Doing Business in Federal Democratic Republic of Nepal**", also known as the Foreign Investment Bill of Nepal 2075 BS (2019 AD).

(b). "**Nepali national**" shall mean a citizen of Nepal or a domestic partnership or association wholly owned by the citizens of Nepal; or a corporation organized under the laws of Nepal of which at least fifty-five percent [55%] of the capital stock outstanding and entitled to vote is owned and held by citizens of Nepal; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Nepali national and at least fifty-five percent [55%] of the fund will accrue to the benefit of Nepali nationals; Provided, that where a corporation its non-Nepali stockholders own stocks in a registered firm/enterprise at least fifty percent [50%] of the capital stock outstanding and entitled to vote of both corporations must be owned and held by citizens of Nepal and at least fifty percent [50%] of the members of the Board of Directors of each of both corporation must be citizens of Nepal, in order that the corporation shall be considered a Nepali national. The control test shall be applied for this purpose.

Compliance with the required Nepali ownership of a corporation shall be determined based on outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Nepali nationals, mere legal title is not enough to meet the required Nepali equity. Full beneficial ownership of the stocks coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Nepali nationals.

Individuals or juridical entities not meeting the qualifications are considered as non-Nepali nationals.

(c). "**Foreign corporation**" shall mean one which is formed, organized or existing under laws other than those of Nepal. Branch office of a foreign company carries out the business activities of the head office and derives income from the host country. Representative or liaison office

deals directly, with the clients of the parent company but does not derive income from the host country and is fully subsidized by its head office. It undertakes activities such as but not limited to information dissemination and promotion of the company's products as well as quality control of products.

(d). "**Investment**" shall mean equity participation in any enterprise organized or existing under the laws of Nepal. It includes both original and additional investments, whether made directly as in stock subscription, or indirectly through the transfer of equity from one investor to another as in stock purchase. Ownership of bonds [including income bonds], debentures, notes or other evidences of indebtedness does not qualify as investments

The purchase of stock options or stock warrants is not an investment until the holder thereof exercises his option and acquires stock from the corporation.

(e) "**Foreign investment**" shall mean an equity investment made by investor; Provided, however, that for purposes of determining foreign ownership, rupee investments made by investor shall be considered; Provided, further, that only foreign investments in the form of foreign exchange and/or other assets actually transferred to Nepal and duly registered with the Nepal Rastra Bank and profits derived therefrom can be repatriated; and Provided, finally, that, for purposes of Section 8 of the Bill, and Rule VIII, Section 6 of these Rules and Regulations, "Existing Foreign Investments" shall mean an equity investments made by investor registered with the Investment Board of Nepal in the form of foreign exchange and/or other assets transferred to Nepal.

(f). "**Doing business**" shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in Nepal or who in any calendar year stay in the country for a period totalling one hundred eighty [180] days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in Nepal; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to and in progressive prosecution of commercial gain or of the purpose and object of the business organization.

The following acts shall **not** be deemed "**doing business**" in Nepal:

- (1). Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor;
 - (2). Having a nominee director or officer to represent its interest in such corporation;
 - (3). Appointing a representative or distributor domiciled in Nepal which transacts business in the representative's or distributor's own name and account;
 - (4). The publication of a general advertisement through any print or broadcast media;
 - (5). Maintaining a stock of goods in Nepal solely for the purpose of having the same processed by another entity in Nepal;
 - (6). Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;
 - (7). Collecting information and academic research in Nepal; and
 - (8). Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in Nepali machinery it has manufactured or exported to Nepal, servicing the same, training domestic workers to operate it, and similar incidental services.
- (g). "**Export enterprise**" shall mean an enterprise wherein a manufacturer, processor or service [including tourism] enterprise exports fifty percent [50%] or more of its output, or wherein a trader purchases product domestically and exports fifty percent [50%] or more of such purchases.
- (h). "**Exports**" shall mean the volume of Nepal port Freight On Board (FOB) Nepali rupees value, determined from invoices, bills of lading, inward letters of credit, loading

certificates, and other commercial documents, of products exported directly by an export enterprise or the value of services including tourism sold by service-oriented enterprises to non-resident foreigners or the net selling price of export products sold by an export enterprise to another export enterprise that subsequently exports the same;

Provided, that sales of export products to another export enterprise shall only be deemed exports when exported by the latter, as evidenced by loading certificates or similar commercial documents; and

Provided, finally, that without actual exportation, the following shall be considered constructively exported for purposes of the Bill:

[1] sales of products to bonded manufacturing warehouses of export enterprises;

[2] sales of products to export processing zone enterprises

[3] sales of products to export enterprises operating bonded trading warehouses supplying raw materials used in the manufacture of export products; and

[4] sales of products to foreign companies, diplomatic missions and other agencies and/or instrumentalities granted tax immunities of locally manufactured, assembled or repacked products whether paid for in foreign currency or Nepali rupees funded from inwardly remitted foreign currency.

Sales of locally manufactured or assembled goods for household and personal use to Nepali abroad and other non-resident of Nepal as well as overseas Nepali migrant and paid for in convertible foreign currency inwardly remitted through Nepali banking system shall also be considered exports.

(i) **"Output"** shall refer to the export enterprise's total sales in a taxable year. The term sales shall refer to the value in case of heterogeneous products and volume in case of homogeneous products. Heterogeneous products shall refer to products of different kinds and characteristics as well as to those of the same kind but with various categories using different units of measurement. Homogeneous products shall refer to products of the same kind or category using a common unit of measurement.

(j). **"Export ratio"** shall refer to:

(1). the percentage share of the volume or rupee value of goods exported to the total volume or value of goods sold in any taxable year if the export enterprise is engaged in manufacturing or processing;

(2). the percentage share of rupee value of services sold to non-Nepali nationals to total earnings or receipts from the sale of its services from all sources in any taxable year if the export enterprise is service-oriented; Value of services sold shall refer to rupee value of all services rendered by an export enterprise to non-Nepali nationals that are paid for in foreign currency and/or rupee funded from inwardly remitted foreign currency as properly documented by the export enterprise; or

(3). the percentage share of the volume or rupee value of goods exported to the total volume or value of goods purchased domestically in any taxable year if the export enterprise is engaged in merchandise trading.

(k). **"Domestic market enterprise"** shall mean an enterprise which produces goods for sale or renders service or otherwise engages in any business in Nepal.

(l). **"Joint venture"** shall mean two or more entities, whether natural or juridical, one of which must be a Nepali national, combining their property, money, efforts, skills or knowledge to carry out a single business enterprise for profit, which is duly registered with the Investment Board of Nepal as a corporation or partnership.

(m). **"Substantial partner"** shall mean an individual or a firm who owns enough shares to be entitled to at least one [1] seat on the Board of Directors of a corporation, or in the case of a partnership, any partner.

(n). **"Dangerous drug"** as defined refers to either:

(1). **"Prohibited drug"** which includes opium and its active components and derivatives, such as heroin and morphine; coca leaf and its derivatives, principally cocaine; alpha and cocaine; hallucinogenic drugs, such as mescaline, lysergic and diethylamide [LSD] and other substances producing similar effects; and other drugs and chemical preparations whether natural or synthetic, with the physiological effects of a narcotic or hallucinogenic drug; or

(2). **"Regulated drug"** which includes, unless authorized by the Ministry of Health and self-inducing sedatives, such as secobarbital, phenobarbital, pentobarbital, barbital, amobarbital or any other drug which contains a salt or a derivative of salt of barbituric acid; any salt, isomer, or salt of an isomer, of amphetamine such as Benzedrine or Dexedrine, or any drug which produces a physiological action similar to amphetamine; and hypnotic drugs, such as methaqualone, nitrazepam or any other compound producing similar physiological effects.

(o). **"Advanced technology"** refers to a higher degree or form of technology than what is domestically available and needed for the development of certain industries as subject to guidelines of Ministry of Education, Science and Technology. Its introduction into the country through foreign investments under the terms and conditions of the Bill must be linked to its appropriateness and adaptability to local conditions with a view towards eventual transfer and applicability including the upgrading of the indigenous technology available.

(p). **"Paid-in equity capital"** shall mean the total investment in a business that has been paid-in in a corporation or partnership or invested in a single proprietorship, which may be in cash or in property. It shall also refer to inward remittance or assigned capital in the case of foreign corporations.

(q). **"The Areas Prohibited for Foreign Investment List" or " Prohibited List"** shall mean a list of areas of economic activity whose foreign ownership is limited to a maximum of forty percent [45%] of the outstanding capital stock in the case of a corporation, or capital in the case of a partnership.

(r). **"National Economic Policy Monitoring Authority (NEPMA)"** shall refer to the body reconstituted from National Planning Commission (NPC).

(s). **"Nepal-Born Former Nepali National"** shall mean those who have lost Nepali citizenship but were previously citizens of Nepal the falling in either of the following categories: [a] from birth without having to perform any act to acquire or perfect their Nepali citizenship; or [b] by having elected Nepali citizenship upon reaching the age of majority of Nepali mothers and/or fathers.

(x). **"Transferee of private land"** shall mean a person to whom the ownership rights of private land are transferred through either voluntary or involuntary sale, devise or donation or involuntary executions of judgment.

(y). **"Direct employees"** shall mean Nepali personnel hired and engaged under the control and supervision of the applicant investor/employer in the production of goods or performance of services. Excluded from this definition are personnel hired as casual, seasonal, learner, apprentice or any employee of subcontractor or those under fixed term employment.

(z). **"Start of commercial operation"** shall mean the date when an enterprise actually begins production of the product for commercial purposes or commercial harvest in the case of agricultural activities. In the case of export traders and service exporters, the date when the initial export shipment in commercial quantity has been made or initial performance of service as borne out by the appropriate supporting documents.

Rule II

Scope

Section -1. Coverage. - The Bill covers all investment areas or areas of economic activity except banking and other financial institutions which are governed and regulated by the Banking Regulations and other laws under the supervision of Nepal Rastra Bank.

Rule III

Basis Guidelines

Section -1. The Act covers restrictions pertaining to foreign equity participation only. All other regulations governing foreign investments remain in force.

Section -2. Monitoring of compliance with equity participation requirements. - The Investment Board of Nepal, as applicable, shall monitor the compliance with the equity requirements of the Bill.

Rule IV

Registration of Investments

Section - 1. Qualifications. -

(a). Investor may do business or invest in a domestic enterprise up to one hundred percent [100%] of its capital provided:

(1). Investing in a domestic market enterprise in areas outside the Areas Prohibited for Foreign Investment List; or

(2). Investing in an export enterprise whose products and services do not fall within Lists A and B [except for national security-related activities, which may be approved pursuant to Section 8(b)(1) of the Bill] of the Areas Prohibited for Foreign Investment List.

Provided, further, that, as required by existing laws, the country or state of the applicant must also allow Nepali national and corporations to do business therein.

(b). Investor qualified to do business per paragraph [a] above, but who will engage in more than one investment area, one or more of which is in the Areas Prohibited Foreign Investment List, may be registered under the Bill. However, said non-Nepali national will

not be allowed to engage in the investment areas which are in the Areas Prohibited for Foreign Investment List.

(c). Existing enterprises which are non-Nepali nationals at the time of effective date of the Bill and which intend to increase the percentage of foreign equity participation under the Bill, beyond that previously authorized by the Investment Board of Nepal, shall be governed by the qualifications in item [a] above. Thus, existing enterprises shall be allowed to increase the percentage share of foreign equity participation beyond current equity holdings only if their existing investment area is not in the Areas Prohibited for Foreign Investment List. Similarly, existing enterprises engaged in more than one [1] investment area shall be allowed to increase percentage of foreign equity participation if none of the investment areas they are engaged in is in the Areas Prohibited for Foreign Investment List.

Existing foreign corporations shall be allowed to increase capital even if their existing investment area is in the Areas Prohibited for Foreign Investment List.

Transfer of ownership from one foreign company to another shall be allowed even if the enterprise is engaged in an area in the Areas Prohibited for Foreign Investment List if there is the percentage share of foreign equity.

Section -2. Application for registration.

(a). **Filing of Application.** Applications for registration shall be filed with the Investment Board of Nepal in the case of foreign corporations and domestic corporations or partnerships. In the case of single proprietorships, applications for Kathmandu Valley shall be filed with the Investment Board of Nepal. In the provinces, applications may be filed with the extension offices of the Investment Board of Nepal for corporations/partnerships and the provincial offices of the Ministry of Industry, Commerce and Supply for sole proprietorships.

(b). **Pre-Processing of Documents.** Pre-processing of documents shall be undertaken to assist the investor in determining the completeness of his documents. All applications are considered officially accepted only upon submission of complete documents to the Investment Board of Nepal. Applications for clearances from the Ministry of Defence or Nepal Police for national security-related activities for investments involving advanced technology shall be decided upon by said agencies within seven [7] working days.

(c). **Approval.** Within seven [7] working days from official acceptance of an application, the Investment Board of Nepal shall act on the same. Otherwise, the application shall be considered as automatically approved if it is not acted upon within said period for a cause not attributable to the applicant.

Section - 3. Registration with the Investment Board of Nepal:

(a). **Existing Requirements.** As required by existing laws and regulations, an application form together with the following documents shall be submitted to the Investment Board of Nepal:

(1). In the case of new domestic corporation or a partnership:

- i. Articles of Incorporation/Partnership
- ii. Name Verification Slip
- iii. Bank Certificate of Deposit

- iv. Special Investors Resident Visa for the investor and his family members
- v. Proof of Inward Remittance [for non-resident foreigners]

(2). In the case of a foreign corporation:

(i). Name verification slip

(ii). Certified Copy of the Board Resolution authorizing the establishment of an office in Nepal; designating the resident agent to whom summons and other legal processes may be served in behalf of the foreign corporation; and stipulating that in the absence of such agent or upon cessation of its business in Nepal , the Investment Board of Nepal shall receive any summons or legal processes as if the same is made upon the corporation at its home office.

(iii). Financial statements for the immediately preceding year at the time of filing of the application, certified by an independent Chartered Accountant or Certified Public Accountant of the home country.

(iv). Certified copies of the Articles of Incorporation/Partnership with an English and Nepali translation thereof, if in a foreign language.

(v). Proof of inward remittance such as bank certificate of inward remittance or credit advices.

(vi). For representative offices, the amount remitted initially should be at least US\$30,000. If the paid-in equity/capital is in kind, additional requirements shall be submitted to the Investment Board of Nepal pursuant to its existing rules and regulations. All documents executed abroad should be authenticated by the Nepal Embassy or Consular Office.

(3). (a) In the case of an existing corporation intending to increase foreign equity participation, all documents required of the proposed transaction under applicable laws, rules and regulations shall be submitted.

(b). **Additional Requirements.** As required by the Bill, the following shall be submitted to the Investment Board of Nepal;

(1). For enterprises wishing to engage in security-related activities, clearance from the Ministry of Defence or Nepal Police.

(2). For small and medium-sized domestic market enterprises with paid-in equity capital less than the equivalent of US\$150,000 but not less than US\$100,000, a certificate from the Ministry of Education, Science and Technology that the investment involves advance technology, or a certificate from the appropriate Ministry of Labour, Employment and Social Security that the enterprise has issued an undertaking to employ at least twenty [20] direct employees shall be submitted.

The Ministry of Labour, Employment and Social Security through its Provincial Offices, shall validate and monitor compliance by the investor to the undertaking that it will hire at least twenty [20] direct employees within six [6] months from the start of commercial operations. Non-satisfaction of the undertaking shall be reported to the Ministry of Labour, Employment and Social Security in Kathmandu Valley and to the Investment Board of Nepal which shall cause the investor to satisfy the appropriate higher investment requirement, with penalty for failure to satisfy the undertaking.

(3). Investor of Nepali-origin national wishing to engage in investment areas allowed to them under this Bill, the following documents are required:

(i) For those born abroad, certificate of birth from the appropriate government agency of the country where the birth is recorded showing the father or mother to be a Nepali at the time of birth or if the citizenship of the parents is not indicated, additional proof that the parent is a Nepali at the time of the applicant investor's birth.

(ii) Those born outside Nepal from Nepali father or mother must additionally submit all the following: certified true copies of his/her sworn statement of election of Nepali citizenship and oath of allegiance to the laws of Nepal.

Any document executed or issued abroad must be authenticated by the Nepal Embassy or Consulate Office having jurisdiction over the place of execution or issuance of the document.

(c). **Application Fee.** A reasonable application fee to be determined by the Investment Board of Nepal be collected from each applicant.

Section - 4. Registration with the Board of Investment:

(a). **Existing Requirements.** As required by existing laws and regulations, accompanying documents shall be submitted to Investment Board of Nepal.

All documents executed abroad should be authenticated by Nepal Embassy or Consular Office.

(b). **Additional Requirements.** The additional requirements for corporations and partnerships provided under Section 3[b] hereof shall be complied with.

(c) **Application Fee.** A reasonable application fee to be determined by Investment Board of Nepal shall be collected from each applicant.

(d). **Investment Board of Nepal.** Upon fulfilment of all Investment Board of Nepal requirements and favourable evaluation, the Certificate of Registration for Sole Proprietorship shall be issued by the Investment Board of Nepal. In case of disapproval, the Investment Board of Nepal shall also inform the applicant in writing of the reasons for the disapproval of the registration.

Section - 5. Registration of Non-Nepali nationals intending to engage in the same line of business as their existing joint venture.

(a). During the transitory period, any applicant who has an investment in an existing joint venture, in which he/she or his/her majority shareholder in the existing joint venture is a substantial partner, shall be registered the Investment Board of Nepal in the same line of business if Nepali partners representing the majority of Nepali equity in the existing joint venture certify under oath that they are not capable and willing to make the investment needed for the domestic market activities, which is being proposed to be undertaken by the applicant.

(b). If the Nepali partners are willing and able to make the needed investment, the Investment Board of Nepal shall not register the applicant, in which case, both joint venture partners may agree to undertake the expansion. Both partners are then required to place the balance of their agreed upon investment shares within six [6] months from the date of the agreement. The Nepali partner[s] shall not be compelled to make additional investment for the proposed expansion of domestic market activities, if such

will result in a higher Nepali equity share. If Nepali[s] fails to infuse said capital within said period, per the report of the non-Nepali national applicant to the Investment Board of Nepal, which shall then allow the registration of said non-Nepali national applicant as a separate enterprise under the Bill.

Rule V

Registration with the Nepal Rastra Bank

Section - 1. Nepal Rastra Bank Requirements. - Enterprises seeking to remit foreign exchange abroad for purposes of remittance of profits and dividends and capital repatriation in connection with the foreign investment made pursuant to the Bill shall be deemed registered with the Nepal Rastra after the registration at the Investment Board of Nepal. For this purpose, Nepal Rastra Bank rules and regulations covering procedures for registration of foreign investments shall be observed.

Rule VI

Foreign Investments in Export Enterprises

Section - 1. Allowable foreign equity participation. - Foreign equity participation in export enterprises shall be allowed up to one hundred percent [100%] provided that the products and services of such enterprises do not fall within Lists A and B of the Areas Prohibited for Foreign Investment Lists.

Section - 2. Registration of export enterprises. - Export enterprises shall be deemed registered with the Investment Board of Nepal under the Bill shall be observed for this purpose.

Within seven [7] working days from the issuance of the Certificate of Registration, the Investment Board of Nepal shall transmit to the Ministry of Industry, Commerce and Supply the Certificate of Registration together with the application form duly accomplished by the export enterprises.

Section - 3. Submission of reports. - All duly-registered export enterprises under this Rule shall submit to the Investment Board of Nepal a duly accomplished form within twelve [12] months after the end of each taxable year.

Failure of export enterprises to submit the required reports within the prescribed period or the submission of fraudulent reports shall be a ground for the Investment Board of Nepal to impose appropriate sanctions as provided for under these Rules and Regulations.

Section - 4. Monitoring of compliance with the export requirement. - Upon receipt of the report submitted by the export enterprise, the Investment Board of Nepal shall determine compliance of the enterprise with the export requirement. If the enterprise fails to comply with the export requirement, the Investment Board of Nepal shall advise the Ministry of Industry, Commerce and Supply said failure. The Investment Board of Nepal shall require the firm to immediately increase its export to at least fifty-fifty percent [55%] of total sales. If the firm fails to comply with the order of the Investment Board of Nepal without any justifiable reason, it shall be penalized in accordance with the relevant provisions of Rule XVIII, Section 1 of the Implementing Rules and Regulations. The Investment Board of Nepal shall issue guidelines for this purpose.

Section – 5. Duties and Taxes. - Machinery, equipment, plant and advanced technology required for the enterprise/business/industry will be exempted from all import taxes and custom's duty.

Rule VII

Foreign Investment in Domestic Market Enterprises

Section - 1. Allowable foreign equity participation. - Foreign equity participation in domestic market enterprises shall be allowed up to one hundred percent [100%] unless such participation is prohibited or limited by existing laws or the Areas Prohibited for Foreign Investment Lists.

Section - 2. Change of status from domestic market enterprise to export enterprise. - At its option, a domestic market enterprise may change its status to an export enterprise if, over the last three [3] years, it consistently exported in each year thereof fifty-five percent [55%] or more of its output.

Section 2 of Rule VI shall apply for any change of status from domestic to export enterprise. Such application shall be supported by the relevant reports cited in Rule VI, Section 3 hereof, as evidence that the applicant enterprise has consistently exported fifty-five percent [55%] or more of its output.

The new export enterprise shall be subject to the reportorial requirements and shall be monitored or its compliance with the export requirement under Sections 3 and 4, respectively, of Rule VI of these Rules and Regulations.

Rule VIII

The Areas Prohibited for Foreign Investment List

Section - 1. Description. - The Areas Prohibited for Foreign Investment List shall have two [2] component list: A and B which shall contain areas of economic activities reserved to Nepali nationals. The description and guidelines governing Lists A and B are provided for in Rules IX, X and XI hereof, respectively.

Section - 2. Formulation. - The National Economic Policy Monitoring Authority (NEPMA) shall be responsible for the formulation of the Areas Prohibited for Foreign Investment List, following the process and criteria provided in Section 8 of the Bill and in Rules IX, X and XI hereof.

Section - 3. Approval. - The National Economic Policy Monitoring Authority (NEPMA) shall submit the proposed the Areas Prohibited for Foreign Investment List to the Prime Minister for approval. The NEPMA shall submit the first Areas Prohibited for Foreign Investment List to the Prime Minister at least thirty [30] working days before the scheduled date of publication.

Section - 4. Publication. - The National Economic Policy Monitoring Authority (NEPMA) shall publish the first Areas Prohibited for Foreign Investment List not later than forty-five [45] working days before the end of the transitory period.

Section - 5. Effective Date. - The first Areas Prohibited for Foreign Investment List shall become immediately effective at the end of the transitory period. Subsequent the Areas Prohibited for Foreign Investment Lists shall become effective fifteen [15] days after publication in one [1] newspaper and official Government Gazette of general circulation in

Nepal. Except for List A, each Areas Prohibited for Foreign Investment List shall remain in force for two [2] years from the effective of date of this Bill.

Section - 6. Coverage of operation. - Each Areas Prohibited for Foreign Investment List shall apply only to new foreign investments and shall not affect existing foreign investments at the time of its publication.

Rule IX

Guidelines for List A of the Areas Prohibited for Foreign Investment List

Section -1. Coverage. - List A of the Areas Prohibited for Foreign Investment List consist of the areas of activities reserved to Nepali nationals where foreign equity participation in any domestic or export enterprise engaged in any activity listed therein shall be limited to a maximum of forty-five [45%] percent.

The National Economic Policy Monitoring Authority (NEPMA) shall make an enumeration of said activities reserved to Nepali nationals.

Section - 2. Amendments. - Amendments to List A may be made by the National Economic Policy Monitoring Authority, (NEPMA), anytime to reflect changes made by law regarding the extent of foreign equity participation in any specific area of economic activity.

Rule X

Guidelines for List B of the Areas Prohibited for Foreign Investment List

Section - 1. Coverage. - List B shall consist of the following:

(a). Activities regulated pursuant to law which are defense or law enforcement-related, requiring prior clearance and authorization from the Ministry of Defense or Nepal Police, to engage in such activity as the manufacture, repair, storage and/or distribution of firearms, ammunition, armoured vests and other bullet proof attires, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials.

However, the manufacture and repair of said items may be specifically authorized by the Ministry of Defense or Chief of the Nepal Police to non-Nepali nationals, provided a substantial percentage of output as determined by said agencies is exported.

Compliance with the export requirement shall be monitored by the Ministry of Defense or Nepal Police, as the case may be.

(b). Activities which have negative implications on public health and morals, such as the manufacture and distribution of dangerous drugs; all forms of gambling; sauna and steam bathhouses and other sports centres and medical clinics.

(c). Enterprises, which are in the Areas Prohibited for Foreign Investment List B subsection (a) as above, with paid-in capital of no less than US\$100,000 or its equivalent unless they involve advanced technology as determined by Investment Board of Nepal.

(d). Export enterprises, which are in the Areas Prohibited for Foreign Investment List B, utilizing raw materials from depleting natural resources, with paid-in equity capital of less than US\$500,000.

Section - 2. Process for determination of List B. -

(a). Activities [a] and [b] above shall be determined upon recommendation of the Ministry of Defense, Chief of the Nepal Police, Ministries of Health or Education, Science and Technology and endorsed by the National Economic Policy Monitoring Authority (NEPMA) or upon recommendation of NEPMA, approved and announced by the Prime Minister. List B shall be submitted for Prime Minister's approval together with List A. The NEPMA shall inform said agencies of the deadline for the submission of their recommendations.

(b). Enterprises which are covered by Section 1 [c] above are automatically reserved to Nepali nationals.

Section - 3. Amendments. - Amendments to List B shall be made only after two years, upon the recommendation of the Ministry of Defense, Chief of the Nepal Police, Ministries of Health and Education, Science and Technology, endorsed by the National Economic Policy Monitoring Authority (NEPMA), or upon recommendation of NEPMA, approved and promulgated by the Prime Minister. List B shall be submitted for Prime Ministerial action together with List A.

Rule XI

Investment Rights of Former Nationals of Nepal

Section - 1. Nepal-born former nationals of Nepali-origin shall have the same investment rights of a Nepali citizen in cooperatives, rural banks, thrift banks, Mutual funds, Cooperative and private development banks, financing companies, and activities listed under List B including defence-related activities, if specifically authorized by Ministry of Defense and the Nepal Police.

Rule XII

Rights of Former Nationals of Nepali Origin to own Private Land

Section - 1. Former national of Nepali-origin who has lost his/her Nepali citizenship and who has the legal capacity to enter into a contract under Nepal's laws may be a transferee of a private land up to a maximum area of 5,000 square meters in the case of urban or four [4] hectares in the case of rural land to be used by him/her for business or other purposes.

Section - 2. In case where both spouses are qualified under the law, one of them may avail of the said privilege. However, if both shall avail of the privilege, the total area acquired shall not exceed the maximum allowed.

Section - 3. In case the transferee already owns urban or rural land for business or other purposes, he/she shall still be entitled to be a transferee of additional urban or rural land for business or other purposes, which when added to those already owned by him/her shall not exceed the maximum areas allowed.

Section - 4. A transferee may acquire not more than two [2] lots which should be situated in different municipalities or cities anywhere in Nepal. The total land area acquired shall not exceed 5,000 square meters in the case of urban land or four [4] hectares in the case of rural land for use by him/her for business or other purposes. A transferee who has already acquired urban land shall be disqualified from acquiring rural land and vice-versa. However, if the transferee has disposed of his/her urban land,

he/she may still acquire rural land and vice versa, provided that the same shall be used for business or other purposes.

Section - 5. Land acquired under this Bill shall be primarily, directly and used by the transferee in the performance or conduct of his/her business or commercial activities in the broad areas of agriculture, industry, and services, including the lease of land, but excluding the buying and selling thereof. A transferee shall use his/her land to engage in activities that are not included in the Areas Prohibited for Foreign Investment List or in those areas wherein investment rights have been granted to him/her under the Bill.

Section - 6. Registration of land. - The Land Registration Office in the province or city or town where the land is located shall register the land in the name of the transferee that it will be used for any of the purposes mentioned in Section 5 above, i.e., certification of business registration issued by the Investment Board of Nepal and Ministry of Industry, Commerce and Supply affidavit that the land shall be used for business purposes.

The Land Registration Office shall also ensure that the limits prescribed by law are observed.

Rule XIII

Transitory Provisions

Section - 1. Prior to effective date of these Implementing Rules and Regulations, the previous provisions at the time of effective date of the Bill and its implementing rules and regulations shall govern the registration of foreign investments without incentives.

Section - 2. There shall be a transitory period of thirty-six [36] months after issuance of these Implementing Rules and Regulations to implement the Bill.

Section -3. During the transitory period, the Transitory the Areas Prohibited for Foreign Investment List described in Rule XIV, Section 1 hereof shall take effect.

Rule XIV

The Areas Prohibited for Foreign Investment Lists

Section - 1. Description. - The Areas Prohibited for Foreign Investment Lists shall consist of the following:

(a). List A

All investment areas in which foreign ownership is limited by mandate of the Constitution and specific laws.

(b). List B

(1). Manufacture, repair, storage and/or distribution of firearms, ammunition, armoured vests and other bullet proof attires, lethal weapons, military ordnance, explosives, pyrotechnics and similar materials required by law to be licensed by and under the continuing regulation of the Ministry of Defense or the Nepal Police, as the case may be.

However, the manufacture or repair of these items may be specifically authorized by the Ministry of Defense or the Chief of Nepal Police to non-Nepali nationals, provided a substantial percentage of output, as determined by the said agencies, is exported.

The extent of foreign equity ownership allowed shall be specified in the said authority/clearance.

Compliance with the export requirement shall be monitored by the Ministry of Defense or Chief of Nepal Police, as the case may be.

(2). Manufacture and distribution of dangerous drugs; all forms of gambling, sauna and steam bath houses, massage clinics and other like activities regulated by law because of risks they may pose to public health and morals.

(3). Small and medium-sized domestic market enterprises with paid-in equity capital of less than One hundred fifty thousand US dollars [US\$150,000], are reserved to Nepali nationals: Provided, that if: [1] they involve advanced technology as determined by the Ministry of Education, Science and Technology, or [2] they directly employ at least twenty [20] direct employees, then a minimum paid-in capital of One hundred thousand US dollars [US\$100,000] shall be allowed to non-Nepali nationals.

Section -2. Formulation of the Areas Prohibited for foreign investment lists. -

(a). The National Economy Policy Monitoring Authority (NEPMA), in consultation with relevant agencies, shall enumerate, as appropriate, the areas of investment covered in the Areas Prohibited for Foreign Investment Lists.

(b). The Areas Prohibited for Foreign Investment Lists shall be published in full at the same time as, or prior to, the publication of these Implementing Rules and Regulations to implement the Bill.

Rule XV

Options for Existing Enterprises

Section - 1. Existing enterprises which have been issued Certificate of Authority to do Business or to Accept Permissible Investments under the laws at the time of effective date of this Bill can be allowed to continue to undertake the same activities which they have been authorized to do subject to the same terms and conditions stipulated in their certificates of registration.

Those whose activities have been previously authorized under previous books of laws, and whose activities are not in the Areas Prohibited for Foreign Investment Lists or in subsequent Prohibited Lists may opt to be governed by the provisions of the Bill. Said enterprises shall be considered automatically registered with the Investment Board of Nepal. The Investment Board of Nepal upon surrender of their certificates of authority to the Investment Board of Nepal shall issue a new certificate of authority.

Section - 2. Existing enterprises with more than forty-five percent [45%] foreign equity which have availed of incentives under any of the investment incentives laws implemented by the Investment Board of Nepal may opt to be governed by the Bill. In such cases, said enterprises shall be required to surrender their certificates of registration, which shall be deemed as an express waiver of their privilege to apply for and avail of incentives under the incentives law under which they were previously

registered. Subject to the Investment Board of Nepal rules and regulations, said enterprises may be required to refund all capital equipment incentives availed of.

Rule XVI

Consistent Government Action

Section - 1. No agency, instrumentality or political subdivision of the Government shall take any action in conflict with or which will nullify the provisions of the Bill, or any certificate or authority granted hereunder. Further, Investment in capital and other lawful assets of investors will not be requisitioned or expropriated by authorities in Nepal during the course of investment in enterprises with foreign owned capital and the enterprises will not be nationalized.

Rule XVII

Compliance with Environmental Standards

Section - 1. All industrial enterprises, regardless of nationality or ownership, shall comply with existing rules and regulations, and applicable environmental standards set by the Ministry of Forests and Environment to protect and conserve the environment.

The Ministry of Forests and Environment shall provide the Investment Board of Nepal with a list of environmentally critical activities/projects and areas. Necessary clearances may be secured after registration with the Investment Board of Nepal.

Rule XVIII

Administrative Sanctions

Section -1. Foreign investments in export enterprises. - Non-compliance by any duly-registered export enterprise with Rule VI, Sections 3 and 4 above shall be subject to the following sanctions:

(a). For late submission of the required annual report -

1st violation - written warning

2nd violation - basic fine of Rs10,000 and a daily fine of Rs2,000

3rd violation - basic fine of Rs50,000 and a daily fine of Rs1,000

Subsequent violation – a basic daily fine of Rs2,000

(b). For the submission of fraudulent reports –

1st Violation – Rs100,000 for partnership/corporation, and Rs50,000 for sole proprietorship;

2nd Violation – Rs150,000 for partnership/corporation, and Rs70,000 for sole proprietorship;

3rd violation -Fine in an amount not exceeding 1/2 of 1% of total paid-in capital but not more than three million rupees;

Subsequent violation - Cancellation of registration granted under the Bill.

(c). The Chairman/Chief Executive Officer or official/personnel of the partnership/corporation responsible for the submission of fraudulent reports shall be subject to the following sanctions:

1st violation a fine of Rs50,000; 2nd violation will be a fine of Rs100,000 and 3rd violation will be Rs200,000.

For non-submission of the required reports within twelve [12] months after the taxable year, cancellation of the certificate of registration granted under the Bill.

(d). For failure of any duly-registered export enterprise to comply, without justifiable reason, with the Investment Board of Nepal order to increase its export to at least fifty percent [50%] of total sales:

1st Violation – Rs100,000 for partnership/corporation, and Rs 50,000 for sole proprietorship;

2nd Violation – Rs150,000 for partnership/corporation, and Rs70,000 for sole proprietorship;

3rd violation – fine in an amount not exceeding ½ of 1% of total paid-in capital but not more than Three Million Rupees;

4th Violation – Cancellation of registration granted under the Bill.

The President and/or official of the partnership/corporation responsible in the failure to comply with the Investment Board of Nepal order shall be subject to the following sanctions:

1st violation – fine of Rs50,000; 2nd violation – fine of Rs100,000; 3rd violation Rs200,000.

Section - 2. Compliance with environmental standards. - Any industrial enterprise, regardless of nationality of ownership which fails to comply with existing rules and regulations to protect and conserve the environment and meet applicable environmental standards shall be subject to the sanctions as may be provided for in the rules and regulations of the Ministry of Forests and Environment.

Section - 3. Hearing of violations of the Bill. - The Investment Board of Nepal shall adopt their respective rules and regulations for the purpose of conducting hearings and investigations involving violations of the provisions of the Bill and these Implementing Rules and Regulations.

Section - 4. Other grounds for cancellation - The following are other grounds for the cancellation of the certificate of registration granted under the Bill:

(a). Failure of non-Nepali national intending to engage in the same line of business as an existing joint venture, in which he/she or his/her majority shareholder is a substantial partner, to disclose such fact and the names and addresses of the partners in the existing joint venture in his application for registration with the Investment Board of Nepal or

(b). Commission of any other fraudulent act.

Section - 5. Other violations. - Any other violations of the Bill and these Rules and Regulations shall be penalized in accordance with Section 14 of the Bill.

Rule XIX

Investor Visa to Non-Nepali Nationals

Section - 1. Department of Immigration will issue investor visa to foreign passport holders who qualifies under the proposed Bill as an investor and the visa period will be for no less than one year period;

Section - 2. Investors' dependant family members will also be issued with residential visa with multiple entry/exist. They will not be asked to register with police department as foreign national living in the country;

Section - 3. Department of Immigration will issue such visa once the investor status is confirmed by the Investment Board of Investment;

Section - 4. Investor visa for investor and family members can be issued by Nepal Embassy or Consular Office abroad. Immigration Department under the Ministry of Home Affairs shall prescribe the modalities of processing visa application and issuance of investor visa.

Rule XX

Effective Date of the Bill

Section -1. These Rules and Regulations shall take effect fifteen [15] days after publication in a newspaper of general circulation in Nepal.

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