



Legal Update

Major Changes made by An Act to Amend Some Nepal Acts for Investment Facilitation, 2081 (2024)

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Overview

1. An Act to Amend Some Nepal Acts for Investment Facilitation (the “**Investment Facilitation Act**”) was initially promulgated as an Ordinance by the Hon’ President on 28 April, 2024 (*Baisakh 16, 2081*), which was later passed by the Parliament on July 8, 2024 (*Asadh 24, 2081*). The Investment Facilitation Act was issued in consideration of Nepal Investment Summit, 2024 which was held on 28 and 29 April, 2024 (*Baisakh 16, 2081 and Baisakh 17, 2081 respectively*).
2. The Investment Facilitation Act introduces significant amendments to some Nepalese legislations which are directly related to Nepal’s investment climate. This legal update presents the key changes introduced by the Investment Facilitation Act.

Scope of Amendment

3. The following laws were amended by the Investment Facilitation Act:
 - A. Land Related Legislations
 - a. *Land Act, 1964 (2021) (the “**Land Act**”)*,
 - b. *Land Acquisition Act, 1977 (2034) (the “**Land Acquisition Act**”)*.
 - B. Conservation Related Legislations
 - a. *Forest Act, 2020 (2076) (the “**Forest Act**”)*,
 - b. *National Park and Wildlife Conservation Act, 1973 (2029) (the “**National Park Act**”)*.
 - C. Industry Related Legislations
 - a. *Special Economic Zone Act, 2016 (2073) (the “**SEZ Act**”)*,
 - b. *Industrial Enterprises Act, 2019 (2076) (the “**IEA**”)*.
 - D. Investment Related Legislations
 - a. *Foreign Investment and Technology Transfer Act, 2019 (2075) (the “**FITTA**”)*,
 - b. *Public Private Partnership and Investment Act, 2019 (2075) (the “**PPPIA**”)*.

Key Changes

4. Changes made by the Investment Facilitation Act have been categorically dealt in the upcoming paragraphs:

Land Related Amendments

A. Land Registration exceeding Land Ceiling¹

5. The Investment Facilitation Act has enabled industries, entities, companies, and institutions to register land owned by them exceeding the prescribed land ceiling,

¹Section 12A, Sub-section 1A of the Land Act.

specifically for achieving their objectives. While this provision was originally introduced through the eighth amendment of the Land Act (the “**Eight Amendment**”), the amendment allowed only a brief window of three months for registration. To address this limitation, the Investment Facilitation Act extended the regularization period, granting a one-year timeframe for entities that had missed the opportunity under the Eighth Amendment.

B. Sale and Transfer of Land²

6. The Eight Amendment had restricted the sale and transfer of land owned by any industries, entities, companies, project or educational institutions licensed to own land exceeding the prescribed land ceiling except when the aforementioned bodies are either closed or liquidated and when such bodies are to be transferred to another location.
7. The Investment Facilitation Act, however, introduced one other exception with regards to the sale and transfer of land owned by such licensed bodies. According to it, entities in ownership of license to own land exceeding the prescribed land ceiling, may, with the approval of the Ministry of Land Reform (the “**Line Ministry**”), sale or transfer land purchased within the limit as per Section 7 of the Land Act, only once, upon fulfilling the following conditions:
 - a) The sale or transfer of the land must not affect the employment, production as well as continuous operation of the entity,
 - b) Land may be sold or transferred only to repay its loan and liabilities.
8. However, the sale of land within the prescribed land ceiling does not mean that land previously acquired by the entity, which exceeded the prescribed ceiling before the sale, now falls within the permissible limit.

C. Regulation of the Mortgaged Land³

9. As per this provision, if any land exceeding the prescribed ceiling is mortgaged by the owner, respective banks and financial institutions may acquire such land and get such land registered in their names if it not sold through auction in the process of loan recovery.
10. However, if the land so acquired by the respective banks and financial institutions exceeds the prescribed land ceiling then the banks or financial institutions must sale such land within three years of acquiring it; if not, after expiry of three years, it must only be sold upon taking prior approval of the Government of Nepal.

² Section 12C, Proviso Clause (3) of the Land Act.

³ Section 12F of the Land Act.

D. Determination of the Compensation Amount⁴

11. Regarding the compensation to be provided on acquisition of any private land by the government in accordance to the Land Acquisition Act, the Investment Facilitation Act has introduced limits regarding such compensation amount.
12. As per this provision of the Investment Facilitation Act, while determining the compensation amount, the amount must not exceed three times of the minimum value determined for the registration purpose of the land.

Use of Forest Land and Conservation Related Amendments

E. Definition of Forest Product and Excavation of Mineral Resources

13. The Investment Facilitation Act has removed 'rock, soil, riverine and mineral substances' from the definition of 'Forest Product' and has replaced the it with 'rock, stone and soil'⁵.
14. Further, **Sub-section (2) of Section 43⁶** has been replaced with a new amended sub-section (2), which has slightly changed the provision on excavation of mineral resources in forest area. The amendment has prohibited the excavation of rock, stones, and soil is except for the extraction of raw materials required for National Priority Projects, Investment Board-approved Projects, and National Pride Projects. Additionally, this exception extends to include National Priority Industries.

F. Provision of 'Highly Sensitive Areas' within National Parks and Conservation Areas⁷

15. The Investment Facilitation Act has added Section 5A to the National Park Act whereby, it allows Nepal Government to declare an area within the protected areas as 'Highly Sensitive Areas' by publishing notice Nepal Gazette.
16. The aforementioned amendment further restricts the construction and operation of any other types of projects except the National Priority Projects, Investment Board-approved Projects and National Pride Projects except inside protected areas.
17. On January 15, 2025, the Constitutional Bench of the Supreme Court has recently passed the brief judgment declaring these provisions inconsistent with provisions of the Constitution of Nepal. Such provisions have been declared ineffective from the date of promulgation. The full text of the judgement is yet to be available.

⁴ Section 16 (3) of the Land Acquisition Act.

⁵ Section 2 (r) of the Forest Act.

⁶ Section 43 (2) of the Forest Act.

⁷ Section 5A and Section 6 (1A) of the National Parks Act.

Industry Related Amendments

G. Relocation of Industries within SEZ⁸

18. Previously, there was no provision for the relocation of industries operating outside into the special economic zones (SEZs). The Investment Facilitation Act henceforth, allows investors of industries operating outside SEZ to relocate their machinery, equipment, or tools and operate their industries within the SEZ.

H. Export Requirement for Industries established in SEZ⁹

19. Formerly, industries established in SEZ were mandated to export at least sixty percent (60%) of their goods or services. Furthermore, they were also permitted to sell in the domestic market for up to one year from the commencement of operations in SEZs. This Act introduces the following amendments to these provisions:
- a) Industries are required to export at least 15% of its goods or services up-to 4 years from the commencement of production, and at least 30% thereafter. Essentially, this provision lowers the export requirement for goods produced by industries established in SEZs.
 - b) Similarly, it also allowed industries to sell products in domestic markets up to 3 years.

I. Introduction of Startup Business¹⁰

20. Formerly, there were no provision of ‘startup business’ in the Industrial Enterprise Act (IEA). The Investment Facilitation Act has introduced the concept of ‘*Start up Business or Industry*’. Firms and companies meeting the following criteria may be registered as startup businesses by the industry registration authority:
- a. Having registered as a new company, private firm or partnership firm,
 - b. Use of innovative research and creative thinking technologies in the production of goods or services,
 - c. Probability of rapid advancement,
 - d. Not exceeding 10 years from the date of registration,
 - e. Annual turnover not exceeding 150 million in any fiscal year after registration.
21. Additionally, to promote such startup enterprises or businesses, the Government of Nepal, provincial governments, or local authorities will establish and operate “*Enterprise Promotion Centers*”.

⁸ Section 7 of the SEZ Act.

⁹ Section 13 (1)(2) of the SEZ Act.

¹⁰ Section 2(q1), 4A of the IEA.

J. Flexible Extension of Time for the Commencement of Industrial Operations¹¹

- 22.** Previously, if any industry was unable to commence operations within the timeframe specified in the registration certificate, it was mandated to submit an application for an extension to the registering authority no less than 30 days prior to the expiration of that period. This Investment Facilitation Act has eliminated the requirement to submit the application 30 days in advance. Henceforth, industries will be able to submit an application for an extension at any time upon payment of a late fee.

K. Addition on Facilities and Exemptions to Industries¹²

- 23.** Three additional provisions have been incorporated into the clause concerning the additional facilities and exemptions granted to industries. The provisions are as follows:
- a.** The Department of Industries (DOI) may prescribe standards for wastage of raw material wastage based on the industrial consumption capacity of an industry.
 - b.** The Government of Nepal (GoN) can provide incentives and facilities to information technology-based industries established with a capital investment of NPR 1 billion.
 - c.** Both the GoN and Provincial Governments, along with local bodies, have the authority to offer incentives, exemptions, concessions, and financial facilities to startup businesses.

L. Collateralizing Land for Industrial Loans¹³

- 24.** Sub-section (6) of Section 32 of the IEA has been replaced by a new sub-section (6) which includes, industries that have obtained approval to hold land exceeding the prescribed ceiling can put up to fifty percent (50%) of the acquired lands as collateral to obtain loans from banks and financial institutions upon submitting its the Detailed Project Report (DPR) for the expansion of capacity in areas determined by the DOI.
- 25.** However, this provision does not apply for project financing.

M. Provision of Contract for the Production of Goods¹⁴

- 26.** Previously, the IEA had provisioned that an industry may produce certain products on signing of contract with other industries. This provision, however, had restricted the 'primary products' of the industry and allowed 'auxiliary products' of the industries to be contracted to other industries.

¹¹ Section 9(2) of the IEA.

¹² Section 29 (m)(n)(o) of the IEA.

¹³ Section 32 (6) of the IEA.

¹⁴ Section 50 (1) of the IEA.

27. This new amendment, however, registered entities with similar objectives under prevailing laws may engage in the production of goods/services through contract and sub-contract.

N. Addition on Industries with National Priority¹⁵

28. The Investment Facilitation Act has included ‘national and international air services and cable services’ in the list of industries of national priority.

Investment Related Amendments

O. Definition of ‘Non-Resident Nepali’ and ‘Technology Transfer’

29. Previously, Non-Resident Nepali only indicated those individuals who had obtained Non-Resident Identity Card.
30. The Investment Facilitation Act, however, has brought modification in the definition of ‘Non-Resident Nepali’. The term now refers to individuals who have obtained either Non-Resident Nepali Citizenship or Non-Resident Identity Card¹⁶.
31. Similarly, the definition of ‘Technology Transfer’ now encompasses the concept of ‘reverse engineering’ as well¹⁷.

P. Technology Transfer by Industries Established in Nepal¹⁸

32. Previously, there was no provision for technology transfer by industries or companies established in Nepal to foreign countries. However, this Act has introduced the provision for industries or companies operating in Nepal to facilitate technology transfer abroad. Furthermore, such Nepalese industry or company may even establish a branch or unit in the respective foreign country after obtaining approval from the Department of Industry.

Q. Provision on obtaining Project Loans¹⁹

33. Previously, any industry operated with foreign investment, could, on the recommendation of the Ministry of Industry, Commerce and Supply and with the approval of the Nepal Rastra Bank, borrow project loan from any foreign financial institutions.

¹⁵ Schedule-9 of the IEA (Addition of S.N. 17).

¹⁶ Section 2(c) of FITTA.

¹⁷ Section 2 (f) of FITTA.

¹⁸ Section 7A of FITTA.

¹⁹ Section 12 of FITTA.

34. This Act has removed the requirement of obtaining ‘recommendation from the Ministry for obtaining project loans. However, approval from the Nepal Rastra Bank (NRB) is still necessary.

R. Foreign Investment Approval and Contractual Arrangement for Production

35. Formerly, the Department of Industry was the foreign investment approval body for investments up to six billion rupees, while the Investment Board used to grant such approval for investment of amount exceeding six billion rupees. However, this Act has centralized the approval process, entrusting the Department of Industry with sole authority for every foreign investment approvals²⁰.
36. In addition, similar to the amendment made to the IEA, the Act has also introduced an amendment to FITTA whereby industries with foreign investment may produce goods or services in collaboration with other industries having similar objectives through contracts and sub-contracts²¹.

S. Ride Sharing Services on the Negative List²²

37. The Investment Facilitation Act has incorporated ‘*Ride-sharing services with foreign investments exceeding 70%*’ into the negative list of foreign investment. This means a foreign investor can invest up to 70% in the ride-sharing business with at least 30% local investment.

²⁰ Section 17 of FITTA.

²¹ Section 45 (1) of FITTA.

²² Schedule of FITTA.

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