



## Legal Update

# Major Changes Made in the Laws relating to Business and Investment Climate

**Published Date**

18<sup>th</sup> January, 2025

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## Background

The Federal Parliament of Nepal is currently not in session. As a result, the Government of Nepal has recently promulgated four Ordinances, which were approved by the President and published in the Nepal Gazette on Poush 29, 2081 (13 January 2025). These Ordinances are as follows:

- Ordinance to Amend Some Nepal Laws Relating to Promotion of Good Governance and Public Service Delivery, 2081
- Fiscal Procedure and Financial Accountability (First Amendment) Ordinance, 2081
- Privatization (First Amendment) Ordinance, 2081
- Ordinance to Amend Some Nepal Laws Relating to Improvement of Financial and Business Environment and Investment Increment, 2081

This legal update highlights key amendments made to several laws related to business and investment including:

- Ordinance to Amend Some Nepal Laws Relating to Promotion of Good Governance and Public Service Delivery, 2081
- Ordinance to Amend Some Nepal Laws Relating to Improvement of Financial and Business Environment and Investment Increment, 2081

Please refer to separate legal updates prepared for coverage of the amendments made to the foreign investments, abroad investments and revenue leakage matters.

### AMENDMENTS IN THE COMPANIES ACT

#### *A. Inclusion of NRN citizens in the Procedure of Company Registration<sup>1</sup>*

1. The amendment now permits NRN (Non-Resident Nepalese) citizens holding NRN citizenship to apply for the registration of the companies. Along with the other documents required under Section 4 of the Companies Act, they must also submit an authorized copy of their NRN citizenship when applying for company registration.

#### *B. Provisions regarding Purchase of Shares in Kind<sup>2</sup>*

2. Previously, the Companies Act had specifically recognized the purchase of shares in kind by promoters or any other parties during the time of company incorporation. This provision has been further regulated and revised by the Amendment upon addition of the following:

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<sup>1</sup>Section 4(2)(f) of the Companies Act.

<sup>2</sup>Section 18(3A),(3B),(3C) and (3D) of the Companies Act.

- 2.1. Companies may now offer the purchase of shares in kind, even after the incorporation of the company to the promoters or any third party.
  - 2.2. The sale, purchase or transfer of shares in kind shall be executed upon passing a special resolution by the general meeting of a company. The general meeting may even decide to issue and allot such shares at discount.
  - 2.3. The amendment has further expanded the horizon of ‘in-kind’ transfer of shares, whereby, the transfer of intellectual property, value addition, service, goodwill, know-how sharing or any technical knowledge has also been incorporated. The valuation of such properties shall be conducted by a licensed engineer or an accountant.
  - 2.4. Introduction of *Employee Share Scheme* (ESS) whereby, the employee of any company may acquire shares of the company in exchange of the remuneration, allowance and benefits he/she is entitled to.
- 3.** *Application of Cap:* The amendment sets forth certain restrictions in this regard. Any company desiring to issue shares in-kind, shall make sure that such a transaction does not exceed 20% of the paid-up capital of the company. Similarly, for companies registered as start-up businesses, the cap is set up to 40% of its paid-up capital.

#### *C. Introduction of Employee Share Scheme<sup>3</sup>*

- 4.** As stated above, the Amendment has introduced the ESS, which has been further elaborated under Section 66A. The following major aspects have been incorporated in this regard:
- 4.1. A company may introduce a policy to provide shares to the directors or employees of the
    - a. company,
    - b. its subsidiary or holding company, or,
    - c. any other subsidiary company of the holding company of the company.
  - 4.2. The directors, however, must be employed as a ‘regular employee’ in accordance to the Labor Act, 2017, to be entitled to the ESS.
  - 4.3. The policy of ESS shall be executed upon passing a special resolution by the general meeting of a company.
  - 4.4. The policy of ESS shall incorporate the unit of share being issued, details of the employee entitled to participate in the ESS, term of the scheme, share purchase value, unit of shares available for each employee and any other necessary matters.
  - 4.5. *Lock-in period of the Shares:* Shares purchased or transfer as per the ESS shall not be sold or transferred to any other party in the term prescribed by the employer at the time of issue.

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<sup>3</sup> Section 66A of the Companies Act.

*D. Exemption on Application of Fine<sup>4</sup>*

5. The Amendment provides a 90% exemption on fines imposed by the Office of the Company Registrar (OCR) for corporate non-compliance. According to this provision, companies that have not yet submitted required documents, information, or notices under the Companies Act can do so with a 90% fine exemption, provided they complete the submission within the fiscal year 2082 B.S (July 15, 2025).

*E. Disqualification of a Director<sup>5</sup>*

6. *Previously*, directors, substantial shareholders, employees, auditor or consultant or any other person having personal interest in a company were disqualified from being appointed as a director of any other company having similar objectives, except where the appointment is being made between two private companies.
7. The amendment has, however, introduced the following exceptions to this provision of disqualification:
  - 7.1. If the appointment is being made in between the holding and subsidiary companies.
  - 7.2. If the appointment is being made in between two public companies, except for bank and financial institutions and insurance companies.

*F. Flexibility in De-registration<sup>6</sup>*

8. *Previously*, companies that were non-operational or had not been updated in accordance with Section 80 and Section 81 of the Companies Act could apply for de-registration within two years of the commencement of the earlier Section 136A, subject to the payment of specified fees.
9. The Amendment has, however, eliminated the two-year time limit. Now, such companies can apply for de-registration by passing a resolution in a general meeting or by the board of directors. Additionally, they are required to submit the company's annual statements and pay either the fines calculated under Section 81 of the Act or an amount equal to 0.5% of the company's paid-up capital, whichever is lower.

*G. Regulatory Bodies for Registration of Branch Office<sup>7</sup>*

10. *Previously*, for the registration of a branch office by a foreign company, the Companies Act mandated the requirement of an approval of the regulatory body for the respective foreign

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<sup>4</sup> Section 81(7) of the Companies Act.

<sup>5</sup> Section 89 (1)(g)(Proviso Clause) of the Companies Act.

<sup>6</sup> Section 136A of the Companies Act.

<sup>7</sup> Section 154 (2) (Proviso Clause) of the Companies Act.

company. This has created a problem for the registration of the branch office whose business has not been specifically regulated by the designated regulators in Nepal.

- 11.** The Amendment has, however, provided that, if foreign companies intending to establish a branch office in Nepal do not have a corresponding regulatory body, the OCR shall be deemed as the regulatory body for such foreign companies.

#### *H. Miscellaneous*

- 12.** *Restriction on transaction between Companies:* Previously, no company could, directly or indirectly, lend money to another company, provide guarantee for a loan borrowed by another company or invest in the securities of another company, in excess of either an amount of 60% of its paid-up capital and free reserve or 100% of the free reserve, whichever is higher. The Amendment has, however, replaced the term 'directly or indirectly' and has mandated the requirement of special resolution to be passed by the general meeting to conduct such a transaction<sup>8</sup>.
- 13.** *Requirement of Audit Report of last 3 fiscal years to issue shares on premium<sup>9</sup>:* The Amendment has removed the requirement of submission of the audit report of last 3 fiscal years in order to apply for the issuance shares on premium by a company at the OCR.
- 14.** *Requirement of Business Commencement Certificate<sup>10</sup>:* Previously, all public companies were required to obtain a 'Business Commencement Certificate' in order to commence its business upon incorporation. The Amendment has however, introduced an exception to this requirement, whereby, if a private company already in operation is converted to a public company, such a certificate shall not be required.

### **AMENDMENTS IN THE INDUSTRIAL ENTERPRISES ACT**

#### *A. Registration of Industries*

- 15.** Pursuant to the Industrial Enterprises Act (IEA), no industry can be established or operated without its registration. The Amendment, however, introduces an extension of timeline to this requirement. Industries that were established or operating without registration at the time the Amendment came into effect can now apply for registration within one year of its commencement, subject to the payment of prescribed fines<sup>11</sup>.

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<sup>8</sup> Section 176(1) of the Companies Act.

<sup>9</sup> Section 29(4) of the Companies Act.

<sup>10</sup> Section 63(1) Proviso Clause of the Companies Act.

<sup>11</sup> Section 3(1A) of the IEA.

- 16.** Further, in regards to registration of industries, the Amendment has introduced yet another provision<sup>12</sup>. As per this provision, an industry is deemed registered and the Department of Industries (DOI) shall provide an industry registration certificate, if an applicant submits the required documents and details as prescribed, and if:
- a. The DOI does not seek for an additional documents or information with the applicant within 15 days or,
  - b. The DOI does not make a decision regarding its registration within 15 days of submission of the application.

This provision, however, is not applicable for industries related to atomic energy, radio-active materials and uranium energy.

- 17.** *Extension of Time Period for Registration of Listed Industries*<sup>13</sup>. The IEA mandates the requirement of a prior-approval of the Industrial and Investment Promotion Board (IIPB) for industries listed under Schedule-1 of the IEA and apply for registration at the DOI within the timeline specified in the approval.
- 17.1. *Previously*, if an application for registration was not made within the specified timeline under the approval, such an approval was deemed *ipso facto, void*.
  - 17.2. The Amendment has however, removed the *ipso facto* invalidation of the approval and introduces a provision of applying for an extension of such timeline at the IIPB.

**B. Requirement of Environment Impact Studies**<sup>14</sup>

- 18.** *Previously*, industries were required to conduct environmental impact studies prior to increment of its capital. The Amendment has removed this requirement.
- 19.** Similarly, *previously*, the IEA required an industry to make a 'declaration', for industries-not-requiring an environment impact studies, accompanied with reasons and grounds of non-requirement of an environmental impact study and ways to mitigate the impact on environment. The Amendment, has however, replaced the need of a declaration with a requirement of an 'Environment Management Plan' to be submitted while applying for the registration of an industry.

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<sup>12</sup> Section 4(9) of the IEA.

<sup>13</sup> Section 8(7)(7A)(7B) of the IEA.

<sup>14</sup> Section 7(2)(5) of the IEA.



*C. Transfer of Industries*<sup>15</sup>

- 20.** Previously, the IEA mandated the requirement of an approval of the DOI for transfer of an industry from one province to another. The Amendment has removed such a requirement.
- 21.** Further, the IEA has mandated the requirement of environmental study (*if required*) of where the industry is being transferred to.

*D. Requirement of Approval*<sup>16</sup>

- 22.** The Amendment mandates the requirement of prior approval to be taken from the industry registration approving body for transfer or change in ownership of an industry. This provision has introduced additional requirement and may not be considered as industry friendly provision.

*E. Facilities and Concessions*<sup>17</sup>

- 23.** The Amendment has introduced following new facilities and concessions for industries:
- a. An industry may obtain project loan or project financing from foreign financial institutions upon obtaining an approval of the Nepal Rastra Bank (NRB), the Central Bank of Nepal.
  - b. Additional facilities and concessions for information technology related industries conducting business of more than 5 crores yearly.

*F. Mortgage of the Land acquired in excess of the Land Ceiling*<sup>18</sup>

- 24.** The Amendment has introduced a new provision regarding the mortgage of land acquired in excess of the prescribed land ceiling by an industry whereby, industries operating projects under the Build–Own–Operate–Transfer (BOOT) model can also mortgage the land owned by such industries in excess of the prescribed land ceiling for its capacity enhancement.

*G. Addition in the Schedule of IEA*

- 25.** *Schedule–4 (Industries Based on Agriculture and Forest Products):* Addition of industries related to Agricultural Technology and Mechanization.
- 26.** *Schedule–8 (Service Industries):*
- a. Replacement of S.N. 31 with ‘Packaging, Re–filling Service, Natural Gas Re–filling, Gas Re–filling station and distribution’.
  - b. Addition of S.N. 67 (Fund Management) and 68 (Asset Management).

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<sup>15</sup> Section 11 of the IEA.

<sup>16</sup> Section 12A of the IEA.

<sup>17</sup> Section 29(m)(n) of the IEA.

<sup>18</sup> Section 32(6) of the IEA.

- 27.** *Schedule-9 (Industries of National Priority):* Addition of ‘starred hotel, tourism resort, cruise and water entertainment’ in S.N. 6.

**AMENDMENT IN THE SPECIAL ECONOMIC ZONE ACT**

*A. Definition of ‘Industry’*<sup>19</sup>

- 28.** The Amendment has re-defined the term ‘industry’ for the Act, which means any industry which has not been listed in the negative list (*list of industries which cannot be established or operated in the SEZ*) of the Act.

*B. Revocation of License*<sup>20</sup>

- 29.** Previously, the license issued to industries under the Act could be revoked if the industry sold its products in the domestic market in quantities exceeding the limits prescribed by the Act. The Amendment has removed this provision of the Act.

*C. Agreement to be entered with the Special Economic Zone Authority*<sup>21</sup>

- 30.** Previously, the Act did not specify a timeline for licensed industries to enter into an agreement with the SEZ Authority. However, the Amendment now requires such industries to enter into an agreement with the SEZ Authority within 120 days of obtaining their license to establish in the SEZ. The applicant may also request a one-time extension of the aforementioned timeline by 30 days if the agreement cannot be finalized within the initially stipulated period.

*D. Provision regarding Mandatory Export*<sup>22</sup>

- 31.** Section 13 of the Act mandates the industries established in the SEZ to export at least 15% of its goods or services for 4 years of its establishment and at least 30% of the same for the subsequent years.
- 32.** However, the Amendment introduces an exception to Section 13 of the Act. If an industry fails to meet the mandatory export requirements specified in Section 13 due to circumstances beyond its control, it may, with prior approval from the SEZ Authority, sell its goods or services in the domestic market within an approved quantity for the duration of such circumstances.

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<sup>19</sup> Section 2(d) of the SEZA.

<sup>20</sup> Section 10(2)(c) of the SEZA.

<sup>21</sup> Section 11 of the SEZA.

<sup>22</sup> Section 13(1) Proviso Clause of the SEZA.



*E. Facilities for Industries established in the SEZ*<sup>23</sup>

- 33.** *Loan maybe borrowed:* The Amendment introduces a provision allowing industries established in the SEZ to apply for loans from banks and financial institutions by using their fixed assets (excluding land) or agreements, as collateral.

*F. Exemption of Income Tax*<sup>24</sup>

- 34.** Previously, the SEZA did not provide any tax exemption to industries later transferred in the SEZ. The Amendment, however, provides an exemption to such industries for the time period starting from their initial business commencement date to the timeline specified under the Act under Section 27(1).

**AMENDMENTS IN THE ARBITRATION ACT**

- 35.** *Fast-track Arbitration Service*<sup>25</sup>: The Amendment has introduced a provision of fast-track arbitration service which shall be executed in accordance to the agreement reached between the parties.
- 36.** *Exclusion of Public Interest*<sup>26</sup>: Previously, upon application by the related parties, the High Court had the power to set aside an award if it is against ‘public interest or policy’, among others. Now, the amendment has removed the term ‘public interest’.
- 37.** *Implementation of an Award by the Court*<sup>27</sup>: Previously, this provision of the Arbitration Act did not differentiate the decision implementation process. The Amendment stipulates that courts must implement arbitration awards within 15 days for fast-track arbitration and within 30 days for awards rendered through general arbitration processes.
- 38.** Further, it also mentions that the implementation of an award shall not be halted merely because of an application filed by any relevant party to set aside the award except in situation where any of the parties specifically file an application in the court to halt the implementation in following situation:
- a. If an award is deemed prejudiced by corruption or fraud in prima facie observation,
  - b. If an irreparable loss of the applicant is proven substantially.

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<sup>23</sup> Section 26A of the SEZA.

<sup>24</sup> Section 27(2) of the SEZA.

<sup>25</sup> Section 13A of the Arbitration Act.

<sup>26</sup> Section 3(3)(b) of the Arbitration Act.

<sup>27</sup> Section 32 of the Arbitration Act.

## AMENDMENTS IN THE LABOUR ACT

39. The compulsory retirement age of the employee has been increased from 58 years to 60 years (Section 147 amended).

### **Disclaimer**

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