

A
CRITIQUE ON
POLICY AND LAWS ON FOREIGN INVESTMENT IN NEPAL

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Submitted by
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Bangalore

1995

DEDICATED

TO

MY MOTHER
MRS. LEELA VERMA

DECLARATION

I hereby declare,

- that this dissertation is written by me during my study (1995) at National Law School of India University, Bangalore.
- that this work is original, except for such help taken from such authorities as has been referred to at the respective places.
- that this work has not been submitted either in part or in whole for any degree at any university.

Bangalore
December 16, 1995



NAVIN KUMAR VERMA

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CHAPTER - I

PROLOGUE

1.1 Conceptual Framework

Since the very beginning of human civilization it has been a constant effort of human beings for the betterment of their lives. Different macro-economic systems have been experimented and different adjustments made in national economic enterprises at different times. If the ancient civilization can be called the period for philosophers, medieval period to be dedicated to the political systems, the modern era certainly for the science, technology and management. Whenever, the political system is in conflict with the development of science and technology, the political system itself became weaker.

The collapse of former USSR is an evidence in itself. It has only added to the popularisation of open market regime where the role of a state in the economic activity has been minimised. State is now only given the role of a facilitator in a liberal democracy.

It is now also argued that the State in the facilitator's role shall bring further development in the developed economy, but it is not true for the developing economies. Even a Keynesian economist shall advocate for state intervention in a situation of acute underdevelopment

and stagflation. The grave problem of underdevelopment associated with poverty, does not permit a state of this region to play a role of a facilitator exclusively. The State has to assume more responsibility with regard to development planning and upliftment of its people socially as well as economically.

Foreign investment which once perceived as an extended hand of colonialism is now being seen as an extended hand of international cooperation, necessitated by the interdependency of the states of the world. Now it is seen as something to be promoted rather than prevented.

In the reign of changed values and ethos, most of the developing economies today are opening up their economy and inviting foreign investment with open arm. A shift from red-tapism to a liberated open market for the active participation of foreign capital has been experienced. Even in the Communist China the only 'red' now is the carpet to welcome foreign investment.

The majority of foreign investment is now attracted by the developing economy such as China, India, Brazil, Argentina, Indonesia, Malaysia, South Korea and such others. But countries with low economic profile does attract comparatively very low foreign investment.

Among various factors influencing the flow of foreign investment directly or indirectly, a congenial legal frame

work is one having most significant direct impact on foreign investment. Here the policies and laws essentially have to play a lead role in the transformation of social behaviour in general and economy in particular.

In order to walk hand in hand with the changed ethos of present century, Nepal, a poor land-locked nation, has also put its effort by way of providing liberalised market for the operation of foreign investment in the country. In this context the continuation of distinct cultural identity of the state without endangering its 'mores' and 'ethos' is going to be a difficult task.

Despite of a number of problems due to geo-political situation, Nepal has also quite a few positive factors which it can assure to the foreign investors, such as (a) political stability in terms of low levels of industrial disputes, (b) strategic location between the two most populous countries India and China, (c) trainable workforce, (d) low cost for infrastructure, (e) huge natural resources and (f) low wages.

Till now the county has been able to attract a low amount of foreign investment, despite all the efforts of the government. Thus, for the maximisation of the benefit of the current global trend in investments a congenial legal system has to be ensured. This work tries to look into different aspects hidden behind the legal system which in one way or the other weakening the legal system itself.

In the juxtaposition of liberation and protection the main objective of this study is to examine and analyse the laws and policies related to foreign investment in order to see whether they are standing as a barrier or are they acting as a facilitator in the maximisation of foreign investment specially into the proper direction of the country's infrastructural developmental need. It has been the effort to identify the problems in the promotion of foreign investment within the country. It has also been the effort here to suggest recommendation for the mutual co-existence of domestic and foreign investments to cooperate each other for the growth of the nation.

1.2 Focus of the Study

The present study is broadly focussed on four issues:

1.2.1 The Importance of Foreign Investment

Nepal is one of the least developed countries in the world having a very low per capita income and Gross Domestic Product, poor technological base and scarce capital resource. But it has a wealth of manpower and unexplored natural resources. In this context foreign investment assumes a significant role. How foreign investment is going to help Nepal? How Nepal has accepted foreign investment? These are some main issues.

1.2.2 Domestic Policy and Laws on Foreign Investment

One of the various factors influencing directly and that assumes crucial role, is the policy framework and legal framework of the host country. The government as a facilitator is supposed to provide an even playing field for the domestic as well as foreign investors. Another point of focus here is, how Nepal has formulated its policy and law with regard to the foreign investment? How far they have been successful in attracting foreign investment?

1.2.3 The International Arrangements

The emerging concept of New International Economic Order has placed the domestic economy in the threshold of globalization. What are those arrangements which Nepal has made till now in order to integrate itself with the world economy and what should be its efforts in this regard? These are some of the main focuses of the study.

1.2.4 Problems faced by Government as well as Foreign Investor

Number of problems are faced by government and the foreign investor in the area of exploration so as to form a balanced approach between foreign investment and domestic industrialisation. What are those irritants causing ailment to the system and what are the areas where the government

should concentrate in order to have a balanced approach, is another prime concern of this study.

1.3 Methodology

As the present study is the first of its kind on foreign investment in Nepal, the study is both exploratory and analytical. The sources of data collection is given below.

1.3.1 Sources of Data

Data and information necessary for the study were collected both from primary and secondary sources. The secondary information were collected from library research from various libraries situated in Kathmandu.

The primary information were collected from open ended interviews with various government officials of Ministry of Industries, Department of Industries, Ministry of Law, Justice and Parliamentary Affairs, various personnel from foreign investment companies and local investors. Few numbers of lawyers were also interviewed who are involved in the profession with regard to the foreign investment in Nepal.

During his visit, the researcher found both kinds of investors to be very enthusiastic while on the other hand government officials were reluctant to answer properly.

1.4 Organisation of the Study

The present study is organised in five chapters. Chapter I introduces the work, Chapter II depicts the laws and policy of Nepal with regard to the foreign investment and technology transfer in Nepal. On the other hand, it also gives an idea on importance of it. Chapter III is devoted to the international arrangements in order to expand the trade and commerce with other countries. That has also indirectly influenced the participation of foreign capital in domestic economy. Chapter IV analyses the problems faced by the country with regard to foreign investment and technology transfer. The problems faced by government as well as the foreign investors are presented here. Factors that may cause damages in the balanced approach of the government, have been identified. Suggestions have been made for legislative intervention to mitigate the foreseeable problems. Chapter V is completely devoted to the conclusion and recommendation.

CHAPTER - I I

CHAPTER - II

FOREIGN INVESTMENT AND LEGAL FRAMEWORK

2.1 Introduction

A sound economy is a *sine qua non* for the social upliftment of a people and of course, a sound economic policy has a direct bearing on the prevailing legal framework. Economic policy and economic activities are directly related to the legal framework and vice versa. Hence, the importance of law in relation to economic development cannot be over emphasized.

A sound economic base needs a congenial legal atmosphere as importantly as that of technical man-power, natural resources and sufficient capital. In a country competent with all these factors, economic development can be expected to be impressive. But, it is a matter of fact that no country in the world today is self sufficient. Hence, every country is in one or the other way dependent on other countries for their requirements. The developing countries are seen to have a non-congenial legal environment to mobilise its available capital or to attract foreign capital or even for export trade.

The role of foreign capital, is increasing day by day. The invention of new technologies and exploration of new marketing and management ideas have, no doubt, created a

favourable condition for interdependence whereby foreign investment, transfer of technology and other related factors of economic development receive the required primacy. Foreign capital has helped poor developing countries to have access to technology for exploring their natural resources. The inflow of foreign capital has also enhanced the economic status of the people by way of employment generation and aiding production of import substitution goods, and export trade. The building of infrastructure is a basic requirement for economic development and foreign investment has been found to play a vital role.

Foreign investment is one of the devices by which a country, especially a developing one gets the capital from some other developed countries and in case of transfer of technology, acquires the technology for rapid industrialisation.¹

It is not a new phenomenon. In the nineteenth century direct foreign investment played a prominent role in financing the economic development, particularly of what were then called the "newly settled regions", such as USA, Canada etc. Direct investment was also made by European countries in their colonies particularly in the area of transportation, such as

¹ Chitrakar R. *Foreign Investment and Technology Transfer in Developing Countries*, Avebury 1994, p.11.

railways, and extractive industries, such as mines which could supply raw materials to their home industries.²

Before the first world war, there was tremendous flow of foreign capital to the needy countries from rich countries like UK, Germany and France, and for obtaining key raw materials from abroad and the lure for fabulous profits enabled by legal and economic superiority of those countries. However, during the inter-war period, the outflow declined considerably on account of unsettled political and economic conditions. Added to this was the great depression of 1930's, which created balance of payment problems resulting in exchange control and exchange restrictions. But, after the second world war there has been a significant revival in the flow of foreign capital.³

In the present context, direct foreign investment has been welcomed by developing countries as a vehicle for transferring various managerial resources. Apart from supplementing scarce domestic capital for investment and increasing foreign exchange resources, such investments are expected to bring with them advanced technology, modern management skills and access to new external markets.

² Rangarajan, "Maximising Foreign Investment", in Uma Kapila ed. *Recent Development in Indian Economy*, Vol.4 Part II, pp.59, 66, Academic Foundation, Delhi, 1994.

³ Herrick and Kindelberger, *Economic Development*, McGraw Hill Book Company, 1983, p.466.

The intense academic debate regarding the effects of direct foreign investment has drawn attention to several imperfections and deleterious effects such as capital intensity of such investment, inappropriate and obsolete technology, possible adverse effects of income distribution, transfer pricing and the negative contribution that such investment makes to the balance of payments. The proponents of foreign investments, on the other hand, have highlighted the beneficial effects in terms of encouragement to the development of technology, managerial expertise, integration with the world economy, export and higher growth.⁴

It is true that the foreign capital becomes necessary when the domestic capital for the purposes of economic growth becomes inadequate.⁵ It has also been the focus of argument that the potential savings may come forward only at a higher level of economic activity and foreign capital helps in speeding up economic activities.⁶

Many countries in the past have expressed some reservations regarding foreign investment. They have expressed fears about the adverse impact on domestic entrepreneurship, profit manipulation through transfer pricing and interference in politics.

⁴ *Supra* note 1, p.20.

⁵ Datt and Sundaram, *Indian Economy*, S.Chand & Co., 1988, p.268.

⁶ *Ibid* p.270.

In recent years, foreign private investment seems to have contributed enormously to the growth of Asian semi-industrialized countries like Thailand, Malaysia and Singapore.⁷ However, there are also examples particularly from Latin America and Africa, where the contribution of foreign investment has not been so benign.⁸

Nothing in the world is "a bed of roses". Adverse effects can be found in every aspect of human life and is equally true with foreign investments. However, the pursuit of appropriate domestic policies and domestic legal framework can reduce such adverse effects.⁹

Development planning requires the government to influence the performance of foreign private investment, but in doing this, government should exploit fully the potential of the investment and should devise policies that will meet the mutual interests of private investor and the host country. This calls for a more intensive analysis of consequences of foreign private investment and for more thought and ingenuity in devising approaches that favour the mobilization of foreign private capital while ensuring its most effective "planned performance" in terms of the recipient country's development programme.¹⁰

7 Mier, *Leading Issues in Economic Development*, 6th Edition, Oxford University Press 1995, p.243.

8 *Ibid* p.250.

9 *Supra* note 2.

10 *Supra* note 7.

At present the policies adopted by the developing countries reveal a mixed picture of restrictions and incentives. On the one hand, the foreign investors' freedom of action may be restricted by variety of governmental regulations that exclude foreign private investments from certain "key" sectors of the economy, impose limitations on the extent of foreign participation in ownership or management, specify conditions for employment of foreign and domestic labour, limit the amount of profits and impose exchange controls on the remittance of profits and repatriation of capital.

A progressive liberalisation of policies towards foreign private capital has occurred during recent years. Many countries now recognize that an inflow of private capital may offer some special advantages over public capital and a number of incentive measures have been recently adopted or are under consideration. These incentive devices include assistance in securing information on investment opportunities, the provision of supplementary finance, the establishment of economic overhead facilities such as industrial estates, protective tariffs on commodities that compete with those produced by foreign investors, exemption from import duties on necessary equipments and materials, the granting of exchange guarantees or privileges, tax concession schemes for the encouragement of desired new investments and special legislations for the protection of foreign investment.

2.2 Foreign Investment in Nepal

Nepal is one of the least developed countries in the world. It is a land-locked country sandwiched between two Asian giants China and India. The Eastern Western and Southern part is surrounded by India and the North by China. The population of Nepal by 1987 was 18 Million and the population growth per annum is 2.6 percent.¹¹ The economy is primarily based on agriculture which accounts for about 59 percent of GDP and 91 percent of the population virtually rely on agriculture.¹² Agriculture also contributes more than 60 percent of total export earnings and 80 percent of overall industrial raw material.¹³

The process of industrialisation in Nepal began only after the country opened its borders to the outside world in 1951.¹⁴ The first rudimentary industries of the country were in agro-processing, followed by construction materials and import substitute industries like beverages, cigarettes, textiles, agriculture tools, furniture, etc.¹⁵

11 Statistical Diary, HMG Central Bureau of Statistics 1991.

12 Economic Survey 1993/94, HMG Ministry of Finance, Kathmandu, Nepal.

13 *Ibid.*

14 Before 1950 the country was ruled by autocratic Rana Regime.

15 *Supra* note 1, p.33.

Nepal started programmes of planned economic development in 1956 with the launching of its first five year plan. Since then it has gone through seven development plans and the eighth plan (1992-97) is now being implemented since mid July 1992.

The emphasis on encouraging and activating the private sector including the foreign investment emerged in Nepal only since the Sixth Plan (1980-85).¹⁶ In 1981, for the first time, an Act relating to foreign investment and technology transfer was promulgated which laid down the laws governing foreign investment and the applicable rules and regulations. Subsequently, the Industrial Policy Statement, 1987, identified foreign investment promotion as an important strategy in achieving the objectives of increasing industrial production to meet the basic needs of the people, creating opportunities for employment and improving the balance of payment through increased import substitution and export.¹⁷

The Industrial Policy of 1987 permitted the foreign investment in medium and large scale industries.¹⁸ The medium scale industries were allowed to receive the foreign capital in equity investment of not more than 80 percent of the equity while 100 per cent foreign investment was allowed

¹⁶ Chitrakar, *Foreign Investment in Nepal*, Centre for Economic Development and Administration, Tribhuvan University, Kathmandu, Nepal, 1988, p.3.

¹⁷ Industrial Policy 1987, HMG Ministry of Industries, Kathmandu, Nepal.

¹⁸ *Ibid.*

in large scale industries which have export of at least 90 per cent of their products.¹⁹ The large scale industries other than '90 percent export' industries, were restricted to receive 80 percent foreign capital in equity. Only, when 20 per cent of the shares reserved for Nepalese entrepreneur could not be sold, the foreign investors were allowed to subscribe for the remaining shares.²⁰ Assurance against nationalization was guaranteed except in very special circumstances of national interest or defence. A provision for just compensation in case of nationalisation was also envisaged in the Act.²¹

Along with the wave of economic liberalization in the world, Nepal experienced the dawn of democracy in which the first democratically elected government realised that the target of economic progress together with upliftment of the economic status of the people cannot be achieved unless the economy was made a liberal and transparent one.²² Therefore, as its first step to fulfill its political commitment, various measures were taken in order to make the economy congenial with the liberalized trend. Further, various amendments to laws including the reformulation of the industrial policy, foreign investment policy, trade policy and fiscal policy were

19 *Supra* note 16.

20 *Ibid*

21 Sec.11 Industrial Enterprises Act 1985, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

22 See for details, Budget speech of the Fiscal Year 1991-92, HMG Ministry of Finance, Kathmandu, Nepal.

adopted gradually. The participation of the private sector was given a priority and the process of privatization of public enterprises was started and accelerated.²³

The new industrial policy emphasized on simplification of procedures, transparency in implementation and improvement in productivity through the upgradation of technical know-how and efficiency of the industries in order to compete in the free and competitive world market with minimum adverse effects on environment.²⁴

The following policy and procedural improvements have been introduced in order to attract investment in the industrial sector from both domestic as well as foreign investors.

1. Ownership

Foreign investors are allowed to invest upto hundred percent in equity²⁵ shares in medium and large scale industries, the only limitation being that foreign investment projects must have an investment of more than Rs.20,000,000 (Approximately US \$ 400,000) in fixed assets.²⁶

²³ *Eighth Plan (1992-97)* HMG National Planning Commission, Kathmandu, Nepal, 1992, p.1.

²⁴ Ibid

²⁵ Industrial Policy 1992, HMG Ministry of Finance, Kathmandu, Nepal.

²⁶ Sec.4 Foreign Investment and Technology Transfer Act 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

2. Areas Open

As industrialisation in Nepal is very low, it was of prime importance to establish as many industrial units as possible. To attract more foreign investments, that too in a wide spectrum, foreign investment was allowed in almost all areas except defence related industries and production of cigarette, bidis, and liquor for domestic consumption.²⁷

3. Transfer of Technology

Transfer of technology has been accorded prime importance and it has been made possible even in cottage and small scale industries but cottage and small-scale industries are kept away from foreign investment in equity.²⁸

4. Nationalization

Nationalization of industries has been seen as the prime cause of reluctance of foreign investors to invest in a developing country. His Majesty's Government of Nepal has emphatically stated in its policy documents and also stipulated in the relevant Act that the industrial units will not be nationalised.²⁹

²⁷ Sec. 3(4) Ibid.

²⁸ *Supra* note 26.

²⁹ Sec.21, Industrial Enterprises Act, 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

5. Import of Machinery and Raw Materials

Import of machinery and raw materials has been simplified. Recommendation or import licenses from the Department of Industries, Department of Commerce and Nepal Rastra Bank are no more necessary now. The industry can directly approach any commercial bank to open a letter of credit for the import of machinery and raw materials for industrial purposes.³⁰

6. Approval Procedure

There are 32 types of industries which are categorised as affecting security, environment and public health.³¹ Except these industries, other industrial activities do not require any licence for establishment and operation. They are just required to be registered with the concerned Department.

7. Repatriation of Profits

Another best way to attract foreign investors was to make the repatriation of profits easier. The repatriation of profits, technical and managerial fees and a portion of

³⁰ Manual for Foreign Investment, HMG Ministry of Industries, Kathmandu, Nepal.

³¹ See Annexure 2 of Industrial Enterprises Act, 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

salaries of foreign experts have all been guaranteed.³² The income tax on royalties, fees and interests have been fixed at 15 percent.³³

8. VISA Arrangement

In order to make access easier to a foreign investor, Visa including non-tourists visa for carrying out studies for investment, non-tourist visa for experts and business visa and residential visa for foreign investors have been provided for.³⁴

2.3 POLICY AND LAWS RELATING TO FOREIGN INVESTMENT IN NEPAL

It has already been mentioned that the prevailing legal atmosphere has a direct bearing on the flow of foreign investment.³⁵ The developing countries in the world today are in the process of making their legal atmosphere congenial to attract more foreign capital. As the economic trend of the world is changing towards more liberalised economies, the protectionism is being gradually withdrawn.

³² Sec.5 Foreign Investment and Technology Transfer Act 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

³³ Ibid.

³⁴ Sec.6 Ibid.

³⁵ *Supra* note 7.

Nepal is no exception; it has to work hand in hand with the liberalised trend. Foreign investment has been seen in Nepal as a vehicle to obtain access to desirable technology, import substitution and expansion of export markets, higher management skills and an increase in employment opportunities.³⁶ Therefore, the legal atmosphere of Nepal is being made favourable and congenial to attract more and more foreign investments. At this moment, the country is trying to attract more foreign investment rather than assessing and evaluating the impact of such investment.³⁷ The country's endeavour in order to create favourable atmosphere is reflected in the Industrial Policy 1992, Foreign Investment and 'One Window' Policy, 1992, Foreign Investment and Technology Transfer Act, 1992, and the Industrial Enterprises Act, 1992.

The constitution promulgated soon after the restoration of democracy reflected the common aspiration of the general public of Nepal regarding their social, economic and political upliftment as well as stability and justice.³⁸ The constitution itself has paved the way for foreign investment in Nepal to enhance the standard of living of the people by providing ample opportunities for employment.³⁹

³⁶ Foreign Investment and One Window Policy, 1992, HMG Ministry of Industries, Kathmandu, Nepal.

³⁷ *Supra* note 16, p.25.

³⁸ Preamble of Constitution of the Kingdom of Nepal 1990, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

³⁹ Art 26(10) *Ibid*.

2.3.1 Constitutional Commitments

The Constitution of the Kingdom of Nepal commits that the securing of social, political and economic justice to the people of Nepal is the inspirational objective behind the promulgation of the New Constitution.⁴⁰ Though, not enforceable in the Court, the fundamental economic objective of the state has been enshrined in the Directive Principles of State Policy as the transformation of the national economy into an independent and self reliant system.⁴¹ The prosperity of the country has also been given paramount emphasis. In order to attain this the Constitution commits to pursue a policy of giving priority to the development of science and technology.⁴² Again for the development of the Nation it commits to pursue a policy of taking measures for the attraction of foreign capital and technology.⁴³ It also promises to give due consideration to the development of local technology and promotion of indigenous investments.⁴⁴ And, the foreign investment is seen in Nepal as something to be promoted rather than prevented.

40 Preamble Ibid.

41 Art 25(2) Ibid.

42 Art 26(11) Ibid.

43 Art 26(12) Ibid.

44 Ibid.

2.3.2 Property Right in the Constitution

The constitution of the kingdom of Nepal ensures the right of all citizen to acquire, own, sell and otherwise dispose of property⁴⁵ but this right is subject to the existing laws.⁴⁶ Hence, it is now a freedom of a citizen to acquire or otherwise the property. The property right has been placed under the fundamental rights. But Art 17(2) provides that no property of any national can be requisitioned, acquired or subjected to any encumbrances on, by the state except in the public interest. Art 17(3) states that the basis and procedures for payment of compensation for property requisitioned, acquired or encumbered by the state in the public interest shall be as prescribed by the law. The constitution protects the right of the nationals regarding their property but makes it subject to the demands of public interest. This can be said to be unexceptionable.

Rule of law has been given paramount importance in the constitution. Art 73 expresses its promise that there shall be no levy and collection of any tax except in accordance with law. Simultaneously, raising of loans or giving of guarantees⁴⁷ are also kept under law, in the absence of which the government cannot do so. The government is under the full

⁴⁵ Art 17(1) Ibid.

⁴⁶ Ibid

⁴⁷ Art 73(2) Ibid.

obligation to protect the economic rights of the nationals and pay full respect to the rule of law.

2.3.3. Industrial Enterprises Act 1992

As industries are considered to be the backbone of the economy, the proper functioning of industries is the most essential factor to strengthen the economy. Nepal, being a developing country, has given emphasis on the development of industries which stands reflected in the Industrial Enterprises Act, 1992. In order to foster the industrial development along with the prioritization of industries according to the development planning requirements a host of incentives and concessions have been envisaged in the Act. The Industrial Promotion Board is another step with regard to the promotion of industrial activities in the economic development of the country. With a view to providing all the necessary assistance through a single channel which would reduce unnecessary hassels to the investor, domestic as well as foreign, a one window committee has been established pursuant to this Act. The foreign investment industries are provided all the facilities which are enjoyed by the domestic industries without any sort of discriminatory treatment.

The preamble of the Act affirms the purpose of the Act as making arrangements for the fostering of industrial enterprises in a competitive manner through increments in productivity by making the environment of industrial investment more congenial, straightforward and encouraging.

Main Features of the Act

1. Categorisation of Industries⁴⁸

The industries in Nepal are categorized into four:

(a) Cottage industries:

The traditional industries utilizing local or skill raw materials and resources and which are labour intensive and related to national tradition, art and culture are named as cottage industries.

(b) Small Industries:

Industries with fixed assets of up to an amount of ten million rupees are named as small industries.

(c) Medium Industries:

Industries with fixed assets between ten and fifty million rupees are named as medium industries.

(d) Large Industries:

Industries with a fixed asset of more than fifty million rupees are named as large industries.

⁴⁸ Sec.4,5,6 & 7, Industrial Enterprises Act, 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

2. Classification of Industries⁴⁹

According to the stratum of operation the industries are classified as follows:

(a) Manufacturing Industries:

Industries which produce goods by utilizing or processing raw materials, semi-processed raw materials, by-products or waste products or any other goods are termed as manufacturing industries.

(b) Energy based Industries:

Industries generating energy from water resources, wind, solar, coal, natural oil, gas, bio-gas or any other sources are classified as Energy based Industries.

(c) Agro and forest-based Industries:

Industries mainly based on agriculture or forest products such as integrated sericulture and silk production, horticulture and fruit processing, animal husbandry, dairy industry, poultry farming, fishery, tea gardening and processing, coffee farming and processing, herbiculture and herb processing, vegetable seed farming, bee-keeping, honey production, rubber farming, floriculture and production and forestry related business such as lease-hold forests, agro-

⁴⁹ Sec.3, Ibid.

forestry, etc., are categorised under the head of Agro and Forest-based industries.

(d) Mineral Industries:

Industries working for mineral excavation or processing thereof are categorised as mineral industries.

(e) Tourism Industries:

The business of tourist lodging, hotel, restaurant, resort, travel agency, skiing, gliding, water rafting, cable car complex, pony trekking, hot air ballooning, parasailing, golf course, polo, horse riding, etc., are categorised under tourism industries.

(f) Service Industries:

Workshops, printing presses, consultancy services, ginning and bailing businesses, cinematography, construction business, public transportation business, photography, hospitals, nursing homes, educational and training institutions, laboratories, air services, cold storages etc., are classified as service industries.

(g) Construction Industries:

The business related to roads, bridges, ropeways, railways, trolley bus, tunnels, flying bridges and industrial,

commercial and residential complex construction and operation are termed as construction industries.

3. Establishment of Industrial Promotion Board⁵⁰

To render necessary cooperation in formulating and implementing policies, laws and regulations pertaining to the industrialisation of the country and to provide guidelines in attaining the objectives of liberal, open and competitive economic policies pursued by the country so as to make the industrial sector competitive, the Act has provided for an Industrial Promotion Board which will maintain coordination between policy and implementation of industrial policy. It also is vested with the power to give directives to the concerned body in the event of the non-furnishing to the industries of the facilities accorded by the Act.

Constitution of the Board⁵¹

The following are the members of the board:

- a) Minister or Minister of State for Industries - Chairman.
- b) Assistant Minister for Industries - Member.
- c) Member (Industries)
National Planning Commission - Member.
- d) Governor, Nepal Rastra Bank - Member.
- e) Secretary, Ministry of Industries - Member.

⁵⁰ Sec.12, Ibid.

⁵¹ Ibid.

- f) Secretary, Ministry of Commerce - Member.
- g) Secretary, Ministry of Finance - Member.
- h) Secretary, Ministry of Tourism - Member.
- i) Director General, Department of Cottage and Small Industries - Member.
- j) Representative, Federation of Nepal Chambers of Commerce and Industries - Member.
- k) Two persons nominated by His Majesty's Government, either from among the Industry Commerce and Tourism Sector organisations or from among persons of high distinction in the same field - Members.
- l) Director General, Department of Industries - Member.

4. Setting up of One Window Committee.⁵²

A one window Committee has been set up by the Act, in order to make available in time from a single place the facilities and concessions to be enjoyed by any industry, and to perform the other functions as may be delegated by the Board.

Constitution of the Committee⁵³

The One-Window Committee consists of the following members:

52 Sec 17 Ibid.

53 Ibid.

- a. Director General, Dept. of Industries - Coordinator.
- b. Director General, Dept. of Customs - Member.
- c. Director General, Dept. of Excise Duty - Member.
- d. Director General, Dept. of Tax - Member.
- e. Director General, Dept. of Sales Tax - Member.
- f. Director General, Dept. of Commerce - Member.
- g. Chief Controller, Nepal Rastra Bank - Member.
- h. Representative, Federation of Nepal Chambers of Commerce and Industries - Member.
- i. One expert in the field of Industry and Commerce as designated by His Majesty's Government or one representative from the Federation of Chambers of Commerce and Industries - Member.

5. SPECIFICATION OF FACILITIES AND INCENTIVES⁵⁴

Industries established with foreign investment in the form of joint ventures or wholly foreign owned units are entitled to get all the facilities and incentives stipulated in the Act. The facilities and incentives available to the industries, which is applicable to domestic industries also, are as follows:

Income Tax Exemption:

Manufacturing industries (except cigarette, bidi, alcohol, beer, vegetable ghee, plastic and electronic assembling), energy based, agro and forest based (except saw

⁵⁴ Sec.15 Ibid.

mill and catechu) and mining industries are entitled to income tax exemption for a period of 5 years from the date of commercial production by the industry.⁵⁵ The industries classified under national priority are entitled to an income tax exemption for an additional two years.⁵⁶ The agro and forest based industries falling under the national priority list are entitled to an income tax exemption⁵⁷ for an additional 5 years. But if the industry does not fall under the national priority and utilizes 90 per cent or more Nepalese raw material, it is entitled to an additional 2 years of income tax exemption, after the expiration of 5 years.⁵⁸ If a single industry provides direct employment to 600 or more people, it is granted an additional 2 years of income tax exemption.⁵⁹ The dividends earned out of investment in any industry is not subjected to any income tax.⁶⁰ Similarly no income tax is levied on the profits earned through export.⁶¹

Income Tax Reduction

Industries are entitled to a reduction in the tax rate on each income tax slab or corporate tax by 5 points.⁶²

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- 55 Sec 15(b) Ibid.
56 Sec 15(c) Ibid.
57 Ibid.
58 Sec. 15(d) Ibid.
59 Sec 15(r) Ibid.
60 Sec 15(o) Ibid.
61 Sec 15(t) Ibid.
62 Sec 15(e) Ibid.

The Act provides for income tax rebate of 60, 50, 20 and 10 per cent for the industries other than cigarette, bidi, alcohol which have been established and operating in remote, undeveloped, and less developed areas respectively.⁶³ Industries are allowed to calculate the depreciation on fixed assets by adding one-third rate of depreciation allowed under the existing income tax laws.⁶⁴ Industries established as a public limited company with a minimum of 15 per cent of shares distributed to 100 persons and listed in the stock exchange are entitled to a reduction of additional 5 points in the corporate tax.⁶⁵ If any industry diversifies itself by reinvestment in the same or any other industry, or expands its installed capacity by 25 per cent or more, modernizes its technology or develops ancillary industries, it is entitled to a deduction of 40 per cent of the new additional fixed assets from its taxable income.⁶⁶ Industries are also entitled to a reduction of upto 50 per cent from the taxable income for the investment on pollution control process or equipment.⁶⁷ Industries are allowed to capitalize the pre-operation costs incurred by the industry for skill development and training.⁶⁸

63 Sec 15(f) Ibid.
64 Sec 15(h) Ibid.
65 Sec 15(i) Ibid.
66 Sec 15(j) Ibid.
67 Sec 15(k) Ibid.
68 Sec 15(l) Ibid.

After an industry comes into operation, 10 per cent of the gross profit is allowed to be deducted against taxable income on account of expenditure related to technology, product development and efficiency improvement.⁶⁹ Upto 5 per cent of gross income spent for advertisement of the products, promotional services, hospitality and any other similar expenses are allowed to be deducted while assessing taxable income.⁷⁰

Duty Drawback

Any duty or taxes levied on the raw materials, auxiliary raw materials, and such duty or taxes levied on production materials of exportable industrial materials produced by industries producing intermediate goods are entitled to get refund of these duties and taxes, based on the quantity of export.⁷¹ The duty draw-back facility is also granted to the industry which sells its products within the Kingdom of Nepal in convertible foreign currency.⁷²

Export Processing Zone Facility

Although Nepal does not have an established Export Processing Zone (EPZ), any industry exporting 90 per cent or more of its products are entitled to enjoy the facilities as

69 Sec 15(n) Ibid.

70 Sec 15(q) Ibid.

71 Sec 15(x) Ibid.

72 Sec 15(w) Ibid.

if they are established in the EPZ. No tax, duty or fee is levied on the machinery, tools and raw materials utilized by industry and on the exportable products.⁷³

2.3.4 FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER ACT, 1992.

The foreign investment and one window policy which has been reformulated after the promulgation of democratic government in Nepal is reflected in the Foreign Investment and Technology Transfer Act, 1992. The policy document states as its objective to build a strong and dynamic economy by generating additional opportunities for income and employment through expanding productive activities.⁷⁴ In order to increase productivity, it lays emphasis on the importation of foreign capital, modern technologies, management and technical skills, by which enhancement in the competitiveness of Nepalese industries in international markets have been sought to be achieved.⁷⁵

The foreign investment is defined as:⁷⁶

1. investment in Share (Equity),
2. reinvestment of the earnings derived from the investment in shares, and

⁷³ Sec 16(c) Ibid.

⁷⁴ *Supra* note 36.

⁷⁵ Ibid

⁷⁶ Sec 2(b) Foreign Investment and Technology Transfer Act 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

3. investment made in the form of loan or loan facilities, in any industry.

The Act defines 'Technology Transfer' as any transfer of technology to be made under an agreement between an industry and a foreign investor on the following matters:⁷⁷

1. use of any technological right, specialization formula, process, patent or technical know-how of foreign origin;
2. use of any trademark of foreign origin; or
3. acquiring any foreign technical, consultancy, management and marketing services.

The Act defines a foreign investors⁷⁸ as any foreign individual, firm, company or corporate body involved in foreign investment or technology transfer including foreign government or international agency.

Foreign investors may invest their part of equity capital either in the form of convertible foreign currency acceptable to Nepal Rastra Bank, the Central Bank of Nepal through proper banking channels, or in the form of plant machinery and equipment required for the approved industry. But Indian nationals can invest in Indian currency through proper banking channels.

⁷⁷ Sec 2(c) Ibid.

⁷⁸ Sec 2(d) Ibid.

Equity Investment in Cash

The investment must be brought inside the country only after obtaining the approval of investment from the Department of Industries. It is also necessary that the investment of the foreign investor is brought inside the country through proper banking channel. Such documentary proof of bringing of investment must be maintained as it is required to be produced at the time of repatriation.⁷⁹

Equity Investment in Kind

A clear stipulation in a Joint Venture Agreement (JVA) is required if the investment is to be in terms of plant, machinery and equipment. However, approval of the Department of Industry must be obtained prior to the shipment of machinery. For such approval, the company or the industry must submit to the Department the detailed invoice of machinery indicating quantity and price of each individual equipment from the original manufacturer. If such machinery or equipment is second hand, a valuation certificate of guarantee by an independent surveyor must be attached.⁸⁰

⁷⁹ Procedural Manual for Foreign Investment in Nepal, HMG Department of Industries 1994, pp.28, 30.

⁸⁰ Ibid

Loan Investment in Cash:

The agreement between the Nepalese party and the foreign party should, in order to obtain foreign investment in the form of loan, state the terms and conditions including amortization schedule and interest. Approval of the agreement by Department of Industries must be obtained before obtaining such loan, and it must be brought through proper banking channel.⁸¹

Loan Investment in Kind

If any industry wishes to obtain foreign loan in the form of machinery equipment or if the industry wishes to obtain plant machinery in deferred credit an agreement to that effect must be entered into stating the price of the plant, machinery, interest rate and mode of payment along with the details of plant machinery. Due approval from the Department of Industries must be obtained. The supplier must guarantee as to the price of the machinery as competitive and it must be supported by the invoice of the manufacturer.⁸²

REQUIREMENT OF PERMISSION

In order to obtain foreign investment or technology transfer permission from the Department of Industries is to be obtained, which will be granted within thirty days from the

81 Ibid

82 Ibid

date of an application for permission.⁸³ The Act provides that only transfer of technology is allowed in the cottage and small-scale industries sector.⁸⁴ Even for the transfer of technology to cottage and small-scale industries, permission from the Department of Cottage and Small Industries is required.⁸⁵

The Act restricts the foreign investment in industries producing alcohol, cigarettes, or bidi other than those produce alcohol, cigarette or bidi for cent percent export. The industries manufacturing arms and ammunition is also set outside foreign investment.⁸⁶

FACILITIES PROVIDED BY THE ACT

The Act has a provision with regard to the facilities and concessions granted to the foreign investment projects. A tax at a rate only of 15 percent on income received from the interest on foreign loan, royalty, technical and management services fees is levied on a foreign investor.⁸⁷

⁸³ Sec 3(1) Foreign Investment and Technology Transfer Act 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

⁸⁴ *Supra* note 26.

⁸⁵ The affairs relating to cottage and small scale industries are handled by the Department of Cottage and Small Scale Industries.

⁸⁶ *Supra* note 27.

⁸⁷ *Supra* note 32.

Repatriation

The Act clearly specifies that the amount received by the sale of the share of foreign investment in whole or any part thereof, the profit or dividend in lieu of the foreign investment, the payment of principal and the interest on any foreign loan can be repatriated outside Nepal by a foreign investor making investment in foreign currency.⁸⁸ He is also entitled to repatriate the amount received under an agreement for the transfer of technology in such currency as set forth in the concerned agreement.⁸⁹ A foreign national working in any industry, with the prior approval of the Department of Labour, and who is from a country where convertible foreign currency is in circulation, may repatriate his salaries, allowances, emoluments etc., in convertible foreign currency to an amount not exceeding 75 per cent of such salaries, allowances and emoluments. A recommendation from Department of Industries is required in order to obtain the repatriation facility by the foreign investor.

Repatriation of Sales of Shares⁹⁰

For the repatriation of the proceeds of sale of shares of the foreign investor, he must apply to the Department of Industries along with the proof for investment made and number of shares owned along with a letter from the company stating

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ *Supra* note 30.

the completion of the transfer of the related shares duly certified by the Company Registrar's Office. If the share was transferred to any foreign national, prior approval of the Department is required.

A declaration form and approval letter from the Customs Department is required if the investment was made in the form of plant, machinery and equipment.

Repatriation of Dividend

A recommendation from the Department of Industries along with proof of declaration of dividend and auditor's report including balance sheet and profit and loss account together with Customs declaration form in case of investment in the form of plant and machinery, is required in order to repatriate the dividend out of the country.

Repatriation of Loan and Interest

The industrial unit with the foreign loan has to apply to the Department of Industries for sending out the principal and interest on the foreign loan obtained with the approval of the Department along with the certificate from the commercial bank speaking to the transfer of the loan amount into Nepal, custom declaration certificate and invoice in the case of investment in the farm plant machinery, and the certificate of payment of income tax at the rate of 15 per cent on the interest amount.

Repatriation of Technology Transfer Fees

The industrial unit with approved technology transfer agreement, trademark licence agreement, management agreement, or technical assistance agreement can apply to the Department of Industries for the transfer of fees as per the agreement. The company has to submit the calculation of the amount due to the foreign technology supplier certified by the auditor along with certificate of payment of income tax at the rate of 15 per cent on Royalty fee.

Dispute Settlement Measure

Mutual consultation is given prime importance in dispute settlement. If any dispute arises between the foreign investor and the domestic investor or the concerned industry, the concerned parties are required to settle the dispute by mutual consultations in the presence of the Department of Industries.⁹¹ If the dispute cannot be resolved by mutual consultation, the Act has made a provision for Arbitration. The Act specifies that the arbitration shall be in accordance with the prevailing Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL),⁹² while on the other hand, it clearly specifies that the applicable laws

⁹¹ Sec 7(1) Foreign Investment and Technology Transfer Act, 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

⁹² Sec 7(2) Ibid.

shall be the laws of Nepal and the arbitration shall be held in Kathmandu.⁹³

Visa Arrangement⁹⁴

Foreigners other than Indians are required to have valid passports to enter Nepal. Nepal offers seven categories of visas, namely:

- (a) Diplomatic Visa
- (b) Official Visa
- (c) Tourist Visa
- (d) Non-tourist Visa
- (e) Business Visa
- (f) Resident Visa, and
- (g) Study Visa

However, only the four categories of visas at (c) to (f) are relevant to foreign investors and expatriate personnel.

(a) Tourist Visa

A Tourist Visa with single entry valid for 15 or 30 days or with multiple entry valid for 60 days can be obtained from Royal Nepalese Embassies and Consulates abroad or at the point of entry. A 30 days entry visa with single entry, or a 60 days entry visa with multiple entry can be extended for a

⁹³ Sec 7(3) *Ibid.*

⁹⁴ *Supra* note 30.

further period of 30 days or 60 days respectively by the Department of Immigration. It can be extended for an additional 30 days on the recommendation of the Ministry of Home Affairs.

(b) Non-tourist Visa

(i) Non-tourist Visa for Carrying out the Study:

Foreign visitors wishing to undertake research and study for the purpose of investing in Nepal may be granted a non-tourist visa by the Department of Immigration for a maximum period of 6 months on the recommendation of the Department of Industries.

(ii) Non-tourist Visa for Expatriates:

Expatriate personnel working in the industry will be granted a non-tourist visa for a duration of one year at a time on the recommendation of the Department of Industries, or the Department of Labour, and submission of the clearance certificate.

(c) Business Visa

Foreign investors and/or his authorized representative and their dependents are granted a business visa for a period of 5 years at a time on the recommendation of the Department of Industries.

(d) Resident Visa

A foreign investor making a lumpsum investment equivalent to more than US\$ one million in convertible foreign currency, and his dependents can be granted a resident visa on the recommendation of the Department of Industries.

However, if the investor making a lumpsum investment equivalent to more than US\$ one million in convertible currency happens to be a company, only one shareholder authorized by that company and his dependents will be granted a resident visa.

As foreign investors can participate in the equity of an existing company by way of collaboration, or establish a new company, it is of relevance to mention a few words with regard to the Company Act of Nepal.

2.3.5 COMPANY ACT, 1964

The Company Act recognises two kinds of companies, namely, Private Limited Company and a Public Limited Company. It differentiates these types of companies by number of shareholders and the way of share issuing.⁹⁵ A private limited company is required to have a minimum of three shareholders while in the Public Limited Company the number of

⁹⁵ Sec 2(b) and (c) Company Act 1964, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

shareholders should be at least 7.⁹⁶ On the other hand, the maximum number of shareholders in a private limited company has been fixed at 50.⁹⁷ It is mandatory that 30 per cent of the issued capital should be subscribed at the time of incorporation.⁹⁸

Incorporation of the Company

In order to incorporate a company an application is required to be registered with Company Registrar along with the proposed Memorandum of Association and Articles of Association, In order to register a foreign company desirous to conduct its business within the Kingdom of Nepal, the following documents are required to be furnished:⁹⁹

- (a) A certified translation into Nepali or English, of the laws or Charter under which the company has been incorporated.
- (b) A certified translation into Nepali of Memorandum of Association and the Articles of Association.
- (c) The full address of the head office of the company.

⁹⁶ Sec 4, Ibid.

⁹⁷ Ibid.

⁹⁸ Sec 3(3) Ibid.

⁹⁹ Sec.138 read with Sec 2(e) Ibid.

- (d) The details of the Directors, Managing agents, Manager, and Secretary. Full name, address, nationality and occupation is required to be mentioned if these are natural persons. If they are a body corporate, the head office, address and the name, address and nationality of each Director is required to be disclosed.
- (e) The name and address of the person or persons residing in Nepal who is authorised to receive the notices issued in the name of the company.
- (f) The locality within the Kingdom of Nepal where the company has proposed to commence its business and full address of the office of the company situated at such locality.

In case of any alteration in any details, the notice of such alteration with every detail, is required to be furnished to the Company Registrar office within 35 days.¹⁰⁰

In order to issue shares to public in the case of a public limited company, it must publish a Prospectus before issuing such shares.¹⁰¹ The persons signing the Prospectus are accountable for any loss or damages caused to the general public due to any misrepresentation in such Prospectus. They

¹⁰⁰ Sec 138 (3) Ibid.

¹⁰¹ Sec 17 Ibid.

will be held personally liable for compensation of such losses and damages.¹⁰²

2.3.6. PATENT DESIGN AND TRADEMARK ACT 1965

The Patent Design and Trademark Act 1965 protects the intellectual property rights of an inventor or the user of trademark or design as the case may be. The Act defines patent as any useful invention relating to a new method or process of manufacture, operation or publicity of any material or a combination of materials, or that made on the basis of a new theory or formula.¹⁰³ On the other hand, design is defined as the form or shape of any material manufactured in any manner.¹⁰⁴ Trademark is defined to include words, symbols or pictures or a combination thereof to be used by any firm, company or individual in its products or services to distinguish them from the products or services of others.¹⁰⁵ In the patent regime the emphasis has been given to the novelty and usefulness of the article which is sought to be protected under this Act.¹⁰⁶ Similarly, the quality of distinguishing the product or services from the products and

¹⁰² Sec 18 *ibid.*

¹⁰³ Sec 2(a) Patent Design and Trademark Act 1965, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

¹⁰⁴ Sec 2(b) *ibid.*

¹⁰⁵ Sec 2(c) *ibid.*

¹⁰⁶ *Supra* note 104.

services rendered by others has been emphasized for the grant of protection.¹⁰⁷

Acquisition of Title to Patent

Any person desirous of having any patent registered in his name shall have to submit to the Department of Industry an application containing the following particulars along with all available evidence in his possession:¹⁰⁸

- (a) Name, address and occupation of the person inventing the patent.
- (b) If the applicant himself is not the inventor, how and in what manner he acquired the title thereto from the inventor.
- (c) Process of manufacturing, operating or using the patent.
- (d) The theory and/or formula, if any, on which the patent is based.

After the furnishing of the application the Department of Industries has the power to investigate or conduct the studies, and if it is found necessary, take the advice of experts so as to ascertain whether the patent mentioned in the

¹⁰⁷ *Supra* note 105.

¹⁰⁸ Sec 4 *Ibid*.

application is a new invention or not and whether it is useful to the general public or not.¹⁰⁹

Thus, in order to get a patent right over an article it has to go through the test of novelty and utility. There are certain circumstances specified in the Act where the patent right is not to be granted. In case the patent has already been registered in the name of any other person,¹¹⁰ or the applicant is not an inventor nor has he acquired rights over it from the original inventor, or if the patent sought to be registered is likely to affect the public health, conduct or morality or the national interest, or if the registration of such patent would constitute a contravention of existing Nepal law, the Department has the power to deny registration.¹¹¹

Term of Patent

After getting the patent registered, the patentee shall enjoy the protection for a period of seven years from the date of registration thereof.¹¹² After the expiry of seven years of protection, it can be further renewed for a period of another seven years. But a patent right cannot be renewed for more than two times,¹¹³ and the total period of protection is limited to 21 years from the date of registration.

¹⁰⁹ Sec 5 Ibid.

¹¹⁰ Sec 6 Ibid.

¹¹¹ Ibid.

¹¹² Sec 8 Ibid.

¹¹³ Sec 23(b) Ibid.

Acquisition of Title to Trademark

A title to a trademark can be acquired by filing an application for its registration to the Department of Industries, which issues a certificate of registration.¹¹⁴ If it feels that such trademark may hurt the prestige of any individual or institution or adversely affect the public conduct or morality or undermine the national interest or the reputation of the trademark of any other person, or in case such trademark is found to have already been registered in the name of another, the Department of Industries has the power to deny the registration.¹¹⁵ The Act specifically mentions that no person can use a trademark without registering it with the Department.¹¹⁶

The Department also holds the power to investigate and cancel the registration of a trademark if the registered trademark is not brought into use within one year from the date of registration thereof.¹¹⁷

Term of Trademark

The title of the person in whose name a trademark has been registered shall remain valid for a period of seven years from the date of registration. After the expiry of such

¹¹⁴ Sec 16 Ibid.

¹¹⁵ Sec 18 Ibid.

¹¹⁶ Sec 18B Ibid.

¹¹⁷ Sec 18C Ibid.

period the trademark can be further renewed for seven more years. Unlike a patent, the trademark can be renewed any number of times for a period of seven years at a time.¹¹⁸

2.3.7 INCOME TAX ACT, 1974

The Income Tax Act 1974 lays down the grounds for taxation on income, for which the sources of income have been identified and categorised under five heads viz.,

- (1) Income from agriculture
- (2) Income from business, trade or profession
- (3) Income from salaries
- (4) Income from rent of house and land
- (5) Other Sources.¹¹⁹

Though companies listed with the Security Exchange Board and Government owned Corporations are subject to 35 per cent corporate tax,¹²⁰ a resident is taxed on income derived from Nepal as well as income derived outside Nepal and remitted to Nepal.¹²¹ A non-resident is taxed only on his income derived from Nepalese sources.¹²² The Act defines a

¹¹⁸ Sec 18D Ibid.

¹¹⁹ Sec 5 Income Tax Act 1974, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

¹²⁰ Sec 4 Finance Act 1994, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

¹²¹ Sec 6 Income Tax Act, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

¹²² Ibid.

non-resident as a person staying in the country for less than 183 days during an income tax year, or a person staying outside Nepal but deriving income from Nepalese sources or a firm in Nepal under a management of foreign company or firm.¹²³ The Act does not distinguish between resident and non-resident companies for tax purposes. It is mandatory that the person conducting business, trade or profession should register his name in the tax office prior to the commencement of operation of such business trade or profession,¹²⁴ and should acquire income tax registration certificate, which will be subject to renewal at the beginning of every financial year.¹²⁵

Personal Taxation

The single or married status of an individual determines the relief to which he is entitled.¹²⁶ The first Rs.35,000 of income of a married couple or family and in the case of individual Rs.25,000 of income from all the sources as specified in Section 5 of the Act are exempt from income tax. 15 per cent will be the tax burden on the first 10,000 after exempting 35,000 or 25,000 as the case may be, 25 per cent will be the tax on the next Rs.40,000 and 40 per cent on the

123 Sec 2(u) Ibid.

124 Sec 5A Ibid.

125 Sec 5A(5) Ibid.

126 *Supra* note 120.

balance.¹²⁷ But non-resident tax payers will be taxed without giving the exemption as mentioned above.¹²⁸

2.3.8 FOREIGN EXCHANGE (REGULATION) ACT, 1962

While undertaking the process of liberalization of the economy, one of the major steps taken towards the foreign exchange regime is the amendment in the Foreign Exchange Regulation Act. The introduction of a dual exchange rate regime is one of the most significant changes where the official rate of the foreign currency is determined by Nepal Rastra Bank (the Central Bank of Nepal) on the basis of the value of the Nepalese Rupee in terms of a basket of currencies.¹²⁹ It is applicable to all government transactions, imports of some essential items like fertilizers, petroleum products etc., for imports under the auction system and for certain industrial machineries and equipments. On the other hand, another exchange rate is determined by the market on the basis of factors of demand and supply applicable to all other transactions.¹³⁰ As a step towards the convertibility of the rupee, 75 per cent of the foreign exchange earned from exports of goods and services including remittances can be sold to the commercial banks at

¹²⁷ Ibid

¹²⁸ Sec 7 Annexure 4 Finance Act 1994

¹²⁹ Hari Shankar Tripathi, Finance Banking and Foreign Exchange Policies in Nepal. A paper presented in Seminar on Investment Forum, Nov.1992, Kathmandu, Nepal.

¹³⁰ Ibid.

open market rate¹³¹ and 25 per cent of the foreign exchange earned would have to be sold to Nepal Rastra Bank at the official exchange rate.¹³²

However, in case of foreign investment, this 75/25 per cent clause is not applicable. Consequently hundred per cent of capital transfer in the form of foreign investment is facilitated at the open market exchange rate.¹³³ All capital investments and subsequent repatriation in foreign currencies would get automatic approval from the Nepal Rastra Bank provided such capital transfer have been approved by the Industrial Promotion Board.¹³⁴

By this Act the exporters of goods and services are permitted to retain foreign currency account with a bank in Nepal upto 30 per cent of their total foreign exchange receipts.¹³⁵ Upto 5 per cent of such receipts from their deposits can be utilized on business promotion including foreign travel.¹³⁶ The remaining 25 per cent can be used for loan payments, commissions, advertisements and/or membership fees and imports under Open General Licence

131 Ibid.

132 Ibid.

133 Ibid.

134 Ibid.

135 Sec 4 Foreign Exchange (Regulation) Act, 1962, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

136 *Supra* note 130.

(OGL).¹³⁷ Exchange control regulations on most of the current account transactions have been considerably eased. Except for imports at official exchange rates, certain imports under the personal baggage rules and certain banned items, all other imports have been placed under Open General Licence (OGL). Foreign exchange availability for all imports under OGL is automatic on the basis of letters of credit opened at Nepalese banks.¹³⁸

The above mentioned regulations are only related to currencies other than the Indian Rupee. In the case of transactions in Indian rupee, there is unlimited convertibility both for current and capital transactions.

2.3.9 ARBITRATION ACT, 1981

As an alternative to the court adjudication, the concept of arbitration came into the limelight as quicker, more effective and participatory dispute prevention and redressal procedure. It is preferred to court adjudication, because it gives autonomy to the parties to choose the arbitrator having expert knowledge on the subject matter. Another cause for the adherence to the arbitral proceeding by the parties, may be the informal procedures of arbitration, which has an advantage

¹³⁷ ibid.

¹³⁸ ibid.

over court's formal and cumbersome procedural difficulties.¹³⁹

Arbitration being a convenient modality for the settlement of disputes, foreign investors willing to invest in a developing country do surely look into the arbitration legislation of the host country in order to get benefitted from its speedy trial and efficient award.

Although various provisions referring to arbitration for the settlement of disputes were found in different legislations, it was only in 1981, a general law of arbitration was laid down by Arbitration Act 1981. The Act defines (arbitration) agreement as a contract between parties for the settlement of present or future disputes through arbitration with or without specifying the names of arbitrator.¹⁴⁰ While specifying arbitrable disputes, the Act provides that any dispute under bilateral or multilateral agreement to be settled through arbitration.¹⁴¹

Appointment of Arbitrator¹⁴²

As regards the number of arbitrators, it provides that it should be in accordance with the agreement. If the

¹³⁹ Roy Choudhury and Shah, Arbitration Law, Eastern Law House, Lucknow, 1991, p.2.

¹⁴⁰ Sec 2(a) Arbitration Act 1981, HMG Ministry of Law, Justice and Parliamentary Affairs.

¹⁴¹ Sec 3 Ibid.

¹⁴² Sec 5 Ibid.

agreement is silent in this regard, then there shall be a sole arbitrator. If the number of arbitrators pursuant to the agreement happens to be even, then in such cases, one additional arbitrator shall be appointed by the arbitrators. If specified in the agreement, such specified person will be the chief arbitrator but not an umpire. If it is not specified in the agreement, in such case, the person appointed by the arbitrators shall hold the chair of Chief Arbitrator.

If nothing is specified with regard to the procedure of appointment of arbitrator or if the arbitrator cannot be appointed through the procedure specified in the agreement, in such case, the parties may ask the District Court to appoint an arbitrator.

A person who is incompetent to enter into contract or has any vested interest in the subject matter of arbitration, he is unqualified to become an arbitrator.¹⁴³ The Act also provides for the conditions under which arbitrators can be removed by the order of District Court.¹⁴⁴ These are as follows:

- (a) if the arbitrator has not functioned impartially, or,
- (b) he has misconducted in the proceedings, or,
- (c) he has any vested interest in the dispute or has biasness towards any of the parties.

¹⁴³ Sec 8 Ibid.

¹⁴⁴ Sec 9 Ibid.

Submission of the Claim:¹⁴⁵

Any party willing to submit the matter of dispute for arbitration, should submit the claim within three months from the date when the cause of action arose or from the date of the appointment of the arbitrator. Upon such claim the arbitrator will provide the other party one month time to present his defence. If parties fail to submit the claim within the stipulated time, the proceedings will not take place. Though the Act provides for claim and defence, it does not provide for counter claim and rejoinder.

Powers of Arbitrator¹⁴⁶

The Act provides for the following powers to the arbitrator:

- (a) summoning the parties and asking for the submission of documents;
- (b) examining the witness on oath;
- (c) obtaining expert's opinion;
- (d) providing attested copies of the documents;
- (e) if any of the parties happens to be a foreign citizen, requiring from him a deposit of money or a surety so as to ensure the execution of the award;
- (f) issuing interim order, if necessary;
- (g) exercising any other powers given by the parties;
- (h) issuing conditional or alternative award.

¹⁴⁵ Sec 11 *ibid.*

¹⁴⁶ Sec 17 *ibid.*

Arbitral Award¹⁴⁷

The Act provides that the opinion of the majority of arbitrators shall be the arbitral award. But in the case of difference of opinion between the arbitrators, such opinions shall be submitted to the following person. The opinion supported by such person shall be the award of the arbitrator:

- (a) if such person is specified by the agreement, to that person;
- (b) in the absence of such stipulation, the Chief Judge of Appellate Court or any Judge of the same court, specified by the Chief Judge of the Appellate Court.

Enforcement of the Award¹⁴⁸

The Act has provided that the award given by the arbitrator shall be enforced by the parties within 60 days from the date of such award. If applied by the concerned party within 30 days after the expiry of 60 days to the District Court with regard to the non enforcement of such award, the district court assumes the power to enforce the award within 30 days as its own decision.¹⁴⁹

147 Sec 18 Ibid.

148 Sec 22 Ibid.

149 Sec 23 Ibid.

Enforcement of Foreign Arbitral Award

Where in an agreement signed by a resident of Nepal makes provisions for arbitration, such an award can be enforced in Nepal if the award fulfills the following conditions:¹⁵⁰

- (a) if the arbitrator was appointed as per the agreement, in accordance with the law of the land where the award was given;
- (b) if the parties were informed of proceedings in time;
- (c) if the award is limited only in the conditions of the agreement; and
- (d) if the decision is final in the foreign country where the award was made.

Similarly the Act also provides for the enforcement of awards made under any international treaty, agreement or arrangements to which Nepal is a party. Such award is deemed to be an award made under the Act and shall be enforced as such. The basis of enforcement of foreign award is reciprocity. Nepal will not enforce awards given in such countries which do not enforce awards given within the territory of Nepal.¹⁵¹

150 Sec 23 *ibid.*

151 Sec 25 *ibid.*

2.4 CAPITAL MARKET

A healthy capital market is one of the most essential factors in economic development in general, and industrial development in particular, of a country. A continued source of capital can be obtained from the capital market which generates and mobilizes the capital which was stagnated otherwise. The allocation of the capital into a productive areas rather than in unproductive ones is the prime function of the capital market and in order to do so, bringing up together the people who have surplus capital to invest and the people who have the skill to apply those capital into a productive area, is a must. Hence, a prominent role is played by it in the development of industry, commerce and economy at large.

The establishment of the Securities Exchange Centre under the Securities Transaction Act 1985 was the initial step towards the formation of the capital market. But its dormancy was another drawback in the economy. It was dormant because of the lack of adequate legal provision coupled with less participation of the people in the market because of their attitude towards investment and less preparedness in the taking of risks. Another factor influencing the people's attitude was the sluggish development of the industries. As the industrialisation in the country grew, the attitude of the people in investment changed and it necessitated a healthy market. The adoption of a liberal economic policy and the

emphasis in the participation of the private sector were other factors which compelled the development of the capital market.

The expansion of the capital market was severely limited. On the one hand, there was a very limited growth of primary and secondary markets for shares. On the other hand, special institutions such as merchant banking which help in the execution of capital market were still in their infancy. In the same manner, well established financial institutions like provident fund and insurance corporations were unable to participate in the activities of the capital market, due to the lack of adequate legal provisions. These factors limited the capital market activities to the transaction of limited shares and government treasury bills and securities.¹⁵²

The progress, in the arena of commerce and industrialisation, though sluggish, necessitated a step towards further modifications in the existing capital market.

Till the seventh plan no sign of reformation was seen. Till that time the capital market was given a low priority in the development planning. But the eighth plan realised the urgency to activate the role of financial institutions by establishing and developing a stock exchange centre and making legal provisions to ensure its smooth functioning.¹⁵³

¹⁵² Eighth Plan, HMG, National Planning Commission 1992, p.680.

¹⁵³ Ibid.

In order to fulfill the objectives of the eighth plan the Securities Transaction Act was further amended in 1993 to establish an independent and autonomous Securities Board which identifies the players of the 'game' and has the power to prescribe the rules, regulations and guidelines with regard to the securities transaction.

The prime objective of the Board, as mentioned in the Act is to - 154

- advise the government to formulate the policy for the development of the securities market in order to protect and promote the interest of the investors.
- make necessary arrangements in order to manage and regulate securities transaction.
- grant permission to the corporate bodies to conduct the securities market.
- register the securities of corporate bodies.
- give direction to the securities market in order to conduct the securities transactions in a systematic and efficient manner.

The definition of securities as share, stockbond, debenture, debenture stock which is executed by a body

154 Sec 5 Securities Exchange Board Act.

corporate, the certificate of unit or collective saving scheme pursuant to the prevailing laws or negotiable deposit certificates and the treasury bills executed by the government,¹⁵⁵ the establishment of Securities Board,¹⁵⁶ the permission to be required to conduct the securities market, the power of the board to cancel the permission to conduct the securities market,¹⁵⁷ the provision for registration of the securities with the Securities Board,¹⁵⁸ the provision for listing the securities in the securities market,¹⁵⁹ the provision for the membership in the securities market,¹⁶⁰ registration and classification of the members,¹⁶¹ restriction in the exertion of undue influence on the transaction of securities,¹⁶² the power of the Board to obtain the statistical particulars and information as deemed necessary,¹⁶³ from the body corporate registering the securities, securities market and persons, firm or companies who are the members of the securities market, the power of the Board to investigate and inspect the functioning of the members of securities market,¹⁶⁴ placing of restriction on

155 Sec 2(a) Ibid.

156 Sec 3 Ibid.

157 Sec 7A read with Sec 7E Ibid.

158 Sec 7F Ibid.

159 Sec 8 Ibid.

160 Sec 17 Ibid.

161 Sec 18 Ibid.

162 Sec 20 Ibid.

163 Sec 22 Ibid.

164 Sec 23 Ibid.

insider trading¹⁶⁵ and placing of obligation on the part of Securities Board to obey the directives given by the government,¹⁶⁶ the duty to obey the directives given by the Board on the part of securities market¹⁶⁷ and to obey the directives given by the securities market on the part of the members of securities market¹⁶⁸ are the prime features of the Securities Transaction Act 1985 as amended in 1992.

This amendment brought into existence in lieu of the Securities Exchange Centre two entities, namely, the Securities Exchange Board and Nepal Stock Exchange Limited. Because of this the activities such as brokerage and share issues that were previously done by the Securities Exchange Centre is now being undertaken by banks, financial institutions, stock exchange enterprises and market promoters.

To institutionalise the management of the secondary market the market has been opened since December 1993 for the brokers and market promoters. Since then 2 companies, 23 partnership firms and 25 members have been registered as brokers. Similarly, 5 corporate bodies namely, Citizen's Investment Fund, NIDC Capital Market, Nepal Share Market, Nepal Finance Company and Rastriya Banijya Bank have been registered as market promoters. The securities transactions

165 Sec 30 *ibid.*

166 Sec 29 *ibid.*

167 *ibid.*

168 *ibid.*

through these bodies are being conducted through the system of open outcry.¹⁶⁹

By mid April 1993, 59 companies had been listed with Nepal Stock Exchange Limited with a total paid up share value of Rs.1,413 million. Of these listed companies, 25 were manufacturing units, 211 were commercial businesses, 4 were banks, 5 were financial institutions, and one each was from mining and consultancy services.¹⁷⁰ But by mid April 1994, 64 companies were listed with a total paid up share value of 14,024 million.¹⁷¹

The total transaction during the first nine months of the financial year 1994 amounted to Rs.14.59 million out of which transaction in shares amounted to 12.23 million and the transaction in government securities 2.36 million.¹⁷²

This exorbitant growth in the capital market indicates a prosperous trend and reflects an ability in the capital to mobilise and to fulfill the capital requirement in future. The growing demand for capital is expected to be brought down by the efficient management of the capital market. Though in its infancy, the positive attitude shown by the investors as well as the market promoters and the active participation of

169 Economic Survey 1992/93, HMG Ministry of Finance, Kathmandu. Nepal.

170 Ibid 1993/94.

171 Ibid.

172 Ibid.

the brokers beckons towards a glorious future for the capital market. Yet, some loopholes and bottlenecks are present in the system, which are required to be removed by way of amendments to the Act. For instance, there is a restriction to gain from the inside information but the Act lacks the definition of either 'insider' or the 'inside information'.

2.5 COMPARISON OF NEPALESE POLICY WITH OTHER COUNTRIES POLICIES

A comparison of the Nepalese policy with other developing countries policy has been made here. Other than Nepal, the countries of South Asia included are India, Pakistan, Bangladesh and Sri Lanka. The countries of East Asia which are included are Singapore Malaysia, Philippines and Thailand.

For convenience the chapter has been divided into following sub-topics:

(1) Permissible Sectors and Areas Open:

With the advent of New Industrial Policy of 1991 India has opened its market to foreign investors. The upper limit of foreign investment has been raised from 40 per cent of equity to 51 per cent. Even 100 per cent investment is permitted in the 100 per cent export oriented industries. The requirement of foreign equity accompanied by foreign technology has been lifted up and mechanism of automatic

approval by RBI of the projects in high priority areas involving 51 per cent of foreign equity investment has been introduced.¹⁷³ The labour intensive export-oriented industries and construction work, engineering projects and highly capital and technology intensive industrial and agricultural projects have been given importance for the foreign investment in Sri Lanka. It welcomes foreign investment in EPZs with open arms.¹⁷⁴

The foreign investment in Bangladesh is allowed in all sectors of the economy except seven sectors of the 'reserved list'. Quite recently the limit of equity participation has been raised from 51 per cent to 100 per cent.¹⁷⁵

In Singapore most of the economic activities are open to the foreign investors excepting public utilities and telecommunication.¹⁷⁶

As already noted, Nepal has opened up all the areas (mainly on industry and banking) to the foreign investors. The restriction is only with regard to the cottage and small scale industry and medium industries having fixed assets less than Rs. two crore where only technology transfer is

¹⁷³ Rajiv Jain, A Guide to Foreign Collaboration, India Investment Publication 4th edition 1994, p.30.

¹⁷⁴ *Supra* note 1.

¹⁷⁵ Rashid M.M., Economic Liberalisation: Bangladesh Overview, A seminar paper presented at SAARC Law Summit, Kathmandu, 1995.

¹⁷⁶ *Supra* note 174.

permitted. Quite recently the power sector has also been opened up for foreign investors. It shows that Nepal is quite ahead of a few of the countries and lags behind a few countries like Singapore and Philippines.

(2) Ownership and Control

India allows 51% of the equity participation by foreign investors. In case of 100% exports oriented industries the participation may go upto 100% of equity.¹⁷⁷ In Bangladesh terms and conditions determining equity participation, including management contracts are decided on the merits of the individual projects. Technical collaboration in various forms is allowed in almost all types of industries with equity participation. Recently the equity participation by foreign investors has been increased from 51 per cent to 100 per cent.¹⁷⁸ In Pakistan also the foreign investor can now own 100 per cent of equity in any venture.¹⁷⁹

In Singapore, there is no restriction on the amount of foreign equity participation.¹⁸⁰ In the Philippines 40 per cent of equity holding for foreign investors has been allowed, but the firms using a higher degree of technology, and those operating in declared pioneer areas are, however, allowed 100

177 *Supra* note 173.

178 *Supra* note 175.

179 *Supra* note 174.

180 *Ibid.*

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¹⁷⁷ *Supra* note 173.

¹⁷⁸ *Supra* note 175.

¹⁷⁹ *Supra* note 174.

¹⁸⁰ *Ibid.*

per cent foreign capital.¹⁸¹ With regard to ownership and control Nepal does not limit the equity holding unlike in other countries like India and Bangladesh. Hence, it can be said that Nepalese policy with regard to the ownership is more liberal as it allows foreign investment upto 100 per cent in almost all the areas.

(3) Regulatory procedure

In Singapore there are no special procedures for approving foreign investment unless the company is seeking incentives. However, special licences are required from the Monetary Authority of Singapore for the establishment of any financial institution and from the Registrar of Manufactures for the manufacture of certain goods.¹⁸² In Bangladesh also the private sector can now establish industries without prior approval,¹⁸³ while in Sri Lanka foreign investment promotion works and approvals are handled by Greater Economic Commission (GEC).¹⁸⁴

In India, for the high priority sector, a policy of automatic approval from Reserve Bank of India (RBI), has been introduced. In other industries the foreign investment in India requires the prior approval from the RBI.¹⁸⁵ The

181 *Ibid.*

182 *Ibid.*

183 *Supra* note 175.

184 *Supra* note 174.

185 *Supra* note 173.

Nepalese policy stipulates that every foreign investment for the establishment of any industry requires an approval from the Department of Industries. Though industrial licencing has been generally abolished, there are 32 types of industries categorised as affecting public health which requires licencing also.

The regulatory procedure is thus more in Nepal as compared to Singapore and a bit less than India and other SAARC countries.

(4) Investment Incentives and Facilities:

There is no difference in the incentives and concessions given to the native and foreign investors both in India and Nepal. In Pakistan as well, in respect of tax there is no discrimination between domestic and foreign investors.¹⁸⁶ On the other hand, in Singapore, the government offers a wide range of incentives, the most important of which are granted to investments with 'pioneer' status.¹⁸⁷ These companies receive exemption for five to ten years from 40 per cent corporate income tax. More exemptions are given to the industries which export at least one fifth of their production. In Pakistan, an industry is given a tax holiday of three years if located in an urban area, five years if located in a rural area and eight years if located in less developed regions. Industrial machinery required for rural or

¹⁸⁶ ibid.

¹⁸⁷ ibid.

less developed areas can also be imported free of customs duty, sales tax, and import surcharge. Complete exemptions are also given on the imports of machinery required for units involving bio-technology, electronics, fertilizer, fibre-optics and solar energy.¹⁸⁸ With regard to the incentives too, Nepal provides a host of incentives without discriminating the foreign investors from domestic investors.¹⁸⁹

Thus, Nepalese policy is ahead of Pakistani policy but behind Singapore, and similar to that of India.

(5) Repatriation

In Singapore, there are no restrictions on the transfer of profits, dividends, royalties or the repatriation of the capital, whereas in India and Nepal a similar provision with regard to free repatriation of capital appreciation, royalties, technical fees, dividends, interest etc., after the payment of tax, exists.

(6) Access to Domestic Financing

Access to domestic finance is also a motivation for foreign investors, though it is at the cost of the host economy. The interest rates on such finances are also usually

¹⁸⁸ Ibid.

¹⁸⁹ Sec 15 Industrial Enterprises Act, 1992, HMG Ministry of Law, Justice and Parliamentary Affairs, Kathmandu, Nepal.

low for many sectors. Nepal, and most of the countries included here, have given foreign investors an access to such concessional finance. A few countries are, however, found not to offer such facility. In Indonesia for example, joint ventures are restricted from domestic credit.¹⁹⁰

(7) Foreign Labour:

In the Philippines, foreign staff may be hired to occupy high level position only when local skills are not available. As explained, in Nepal, foreign management and technical experts can be employed with prior approval of the government, and personnel from the countries of convertible currency are also permitted to repatriate upto 75 per cent of their salaries, allowance and remunerations in foreign currency.¹⁹¹ The foreign investment policy and incentives of a host country is equally motivating factor as various other factors like natural resource, manpower, and market, because of which most of the developing countries are trying to make their investment landscape more open and liberal. Even the countries having protected markets have opened up their markets following liberal policies.

When comparing Nepalese policy with other countries policies it is found that Nepal seems to be more open than some countries and more restrictive than some others. The countries with restrictive policies are larger countries or

¹⁹⁰ *Supra* note 174.

¹⁹¹ *Ibid.*

countries having larger domestic markets. As compared to other SAARC countries, Nepalese policy seems to be more open. The Sri Lankan policy is open only within the Export Processing Zone (EPZ).

Most of the developing countries prefer foreign investment as joint ventures specially in export sectors. They provide various incentives and facilities to foreign investment. The countries like Hong Kong and Singapore which offer more incentives and facilities seem to be successful. Most of the countries are found not to discriminate between foreign and local investors in giving incentives. Though Nepal has adopted an open policy, the incentives provided seem to be less, compared to incentives provided by other open economies such as Singapore.

It is, therefore, an important strategy for economic development that Nepal be prepared to make its policy more open and examines the possibility of widening the permissible sector. Learning from the experiences of other countries it would also need to provide facilities and incentives comparable at least with other countries in South Asia. Considering the size of the domestic market, an open policy rather than a restrictive one is likely to be more fruitful for Nepal. Restrictive policies may encourage investment intended for domestic market but would discourage export-oriented investment by making the necessary imports more expensive.

CHAPTER - II

CHAPTER III

INTERNATIONAL ARRANGEMENTS

The spread of trade and commerce due to interdependency has interlinked the countries of the world in such a way that the present world is not like the one which it used to be some years back where trade and commerce in a narrow constricted boundaries of a country was sufficient. The limitless desires of human beings have led to the innovation of novel ideas and technological development together with mass production of goods and its cross-country trade. Isolated survival in the present day development is almost impossible. Many international arrangements of bilateral and multilateral nature have emerged in order to help develop a country for the fulfilment of a variety of development requirements. Strengthening of the international economy by way of international trade and cross-country investment is the present day development which is an area of interest for the entrepreneurs. This also has necessitated the bilateral and multilateral arrangements so as to foster the international economy in general and international trade in particular.

Nepal being a poor and land-locked developing country, has put its effort in order to meet its basic development requirements and to enhance its economic and merchandise activities through cross-country trade and commerce, with the help of bilateral and multilateral arrangements with regard to

trade, transit, avoidance of double taxation, investment protection etc.

3.1 BILATERAL ARRANGEMENTS

The land-locked position of Nepal between two Asian giants has put Nepal in such a situation that a balanced approach regarding the bilateral relations with both the countries is required. Foreign relations have close bearings on domestic policies and Nepal's domestic policies are exceptionally influenced by the relationship of Nepal with India and China.

Though a number of treaties have been signed with a number of countries, the treaties with India and China are of great significance because of common borders with them and the existence of trade relations between Nepal and these countries since ancient times. Because of the peculiar open boarder between Nepal and India, the Indo-Nepal treaty assumes prime significance among the treaties with these two countries.

3.1.1 INDO-NEPAL TRADE AND TRANSIT TREATY

Though a number of treaties have been signed between Nepal and India, with regard to Peace and Friendship, Economic Cooperation or so many of political nature or other, the Trade and Transit Treaty has a direct bearing on the subject

matter relating to foreign investment particularly on the matters regarding export trade.

The trade between the two countries were being conducted along customary practices till the Treaty of Peace and Friendship and the Treaty of Trade were signed in 1950 between Nepal and India. This Treaty of Trade and Commerce provided impetus to the trade between the two countries, by which Nepal enjoyed a full and unrestricted right of commercial transit of all goods and manufactures through the territory and parts of India.¹ The treaty was further renewed in 1960, 1971, 1978 and 1989 with some modifications. The original treaty of 1950 contained the provisions for both the trade and transit, and provision for the easy access of Nepalese products into Indian market and Indian products to Nepalese market was stipulated.² The treaty expired in 1970 while at the same time Nepal signed a treaty of trade with East Pakistan.³ During the talks with India with regard to the renewal of the treaty, Nepal raised an issue to incorporate the provision to have an access up to the India-East Pakistan boarder through Radhikapur so as to enhance its trade with Pakistan through surface.⁴ The denial of the route by India, created a situation of anomaly in Indo-Nepal relations and the talks failed many times. Finally in 1971

¹ Avtar Singh (ed.), *Nepal's Relation with India and China*, SIBA Exim Pvt Ltd., 1995, p.733.

² Art 1, *Indo-Nepal Trade and Transit Treaty*, 1950.

³ *Supra* note 1, p.755.

⁴ *Ibid*, p.861.

the talks reached a final consensus and a separate provision for the transit was stipulated. This treaty for the first time contained a provision for the exemption of custom and excise duty for Nepalese products of Nepalese primary producers in the Indian market.⁵ Again in 1976 on the expiry of the treaty of 1971 there was a debate with regard to two separate treaties on trade and transit. At this time also the talks between two government failed a number of times. The issue raised by Nepal was that of transit.⁶ As it was the right of a land locked country to have free access to the sea,⁷ the plea taken by the Nepalese government was that the transit facilities provided by India was to be provided as a matter of right and there should not be any restriction on it by way of conditions of renewal of such a treaty.⁸ Finally in 1978 two separate treaties on Trade and Transit were signed along with An Agreement of Cooperation to Control Unauthorised Trade, which, on expiry in 1983 was renewed without any modification. In 1989 when both the Trade treaty and Transit treaty expired it took 15 months to get it renewed.

There was a crisis of consensus for a long time and all 13 transit points out of 15 were closed down creating a situation of economic blockade. Even the position of *status quo ante* was not allowed and the people of Nepal faced

5 Art. II Indo-Nepal Trade and Transit Treaty 1970.

6 The issue was widely discussed in the Indian Parliament during that time.

7 Convention on Rights of Landlocked Nations.

8 Press release of HMG Nepal on February 1971.

hardship even for their daily commodities including petroleum products. Finally, in December 1991, the democratic government of Nepal was able to settle the situation by signing two separate treaties viz., the Treaty of Trade and the Treaty of Transit along with their protocol.

A provision for the promotion of industrial development of Nepal is incorporated in the treaty,⁹ where India agreed to grant specially favourable treatment to import into India of industrial products manufactured in Nepal on the basis of non-reciprocity in respect of customs duty and quantitative restrictions normally applicable to them.¹⁰ The protocol states that the Government of India will provide access to the Indian market free of 'basic and auxiliary' customs duty and quantitative restriction, generally, for all manufactured articles which contain not less than eighty per cent of Nepalese material or Nepalese or Indian materials. Further it has been stipulated that the access of Nepalese products into Indian market in the same manner but on a case to case basis which contain fifty-five per cent of Nepalese materials and Nepalese and/or Indian material.¹¹

As Nepal is very much backward and needs an extended hand of cooperation for the upliftment of her citizens, it has always been the plea of Nepalese entrepreneurs that the condition of material and labor content should be lifted from

9 Art.V Indo-Nepal Teaty of Trade 1991.

10 Ibid

11 Art V Protocol to Indo-Nepal Treaty of Trade, 1991.

the treaty because of which the industry in Nepal can get further boost to enhance its activities and trade with India.¹²

3.1.2 SINO-NEPAL TRADE TREATY

The formal relation between Nepal and China was established on August 1, 1955 by establishing diplomatic relations. But since ancient times there existed a relation between these countries with regard to the trade and so many other political affairs. There has been evidences of even marriage relation between two royal families of these two kingdoms and trade was only concentrated with Tibet and that too in customary practices of barter system.

The first Agreement on Friendly Relations and on Trade and Intercourse between Nepal and the Tibetan region of China was signed on September 24, 1956, which emphasized on strengthening of economic and trade relations between two countries especially thrust has been given to the traditional trade relations between Nepal and Tibet region of China.¹³ Principle of equilibrium between the total values of imports and exports was adopted on the basis of which trade was conducted.

¹² This issue has been raised by FNCCI in various meetings.

¹³ *Supra* note 1, p.1348.

A provision with regard to the most favoured nation treatment in all matters relating to customs duty and other taxes, fees and other charges was stipulated.¹⁴ On the other hand, border inhabitant of both the countries were entitled to conduct their petty traditional trade on the basis of barter system without being subjected to any of the provisions of the agreement, within an area of 30 kilometers from the border.¹⁵ Further the Trade and Payment Agreement of 1974 renewed in 1984 stipulated the provision whereby six trading points between Nepal and China was specified for the overland trade.¹⁶ Again the list of import and export from either countries was also annexed in the agreement.¹⁷

The Agreement has also stipulated a provision that the inhabitants of bordering locality of either countries, in order to conduct their traditional trade, are not required to hold passport or visa.¹⁸ Only registration of their names suffices the requirement. This requirement is also applicable to the pilgrims of both the countries.¹⁹

The Agreement shows that there is no preferential treatment of one country's production in other country's

14 Art V Sino-Nepal Trade Treaty 1956.

15 Art I(3), Ibid

16 Art VII Sino-Nepal Trade and Payment Agreement 1984.

17 Annexure Ibid.

18 Art VIII Ibid.

19 Ibid.

territory. In order to expand the trade, Nepal should put its endeavour to have a preferential access of her production into the Chinese territory which will enhance the trade potential and subsequently the investors, especially the foreign investors, can be attracted to market their product in China by producing it in a low cost in Nepal.

3.1.3 INDO-NEPAL DOUBLE TAXATION AVOIDANCE AGREEMENT

As the trade and commerce expands outside the territory and the participation of foreign investors increases a case of double taxation surely arises. To curb this problem Nepal and India has entered into the Double Taxation Avoidance Agreement, whereby the entrepreneurs of both the state are protected from the possible evil of double taxation. The agreement is applicable in case of India to the income tax including any surcharge thereon imposed under the Income Tax Act 1961 and to the surtax imposed under the Companies (Profits) surtax Act 1964,²⁰ and in case of Nepal it is applicable to the income-tax imposed under the Income Tax Act 1974.²¹

The agreement provides the relief from double taxation in two ways viz., the exemption and credit, where on the basis of permanent establishment of the person he is liable to a tax in the country where he has a permanent establishment of his

²⁰ Art 2(a) Indo-Nepal Avoidance of Double Taxation Agreement.

²¹ Art 2(b), Ibid.

business.²² A provision has been stipulated stating that the business profit of an enterprise is taxable only in the state unless such enterprise carries on business in other country through a permanent establishment situated therein.²³ If it conducts its business in the aforementioned way the profit of enterprise is subject to tax only so much of them as is attributable to that permanent establishment.²⁴

Though the tax paid in one contracting state is allowed to be deducted pursuant to the domestic legislation, the income earned by way of facilities concession or exemption in one state do not become deductible as per the domestic legislation of other. Nowhere in the agreement such a provision is stipulated, which, in order to promote foreign investment becomes pertinent.

Double taxation avoidance agreement is such a kind of agreement that the absence of which is felt if the trade relation with some country increases. In order to enhance foreign active participation in economy, Nepal is required to put its effort to enter into such agreement with other countries too.

²² Art 5, *ibid*.

²³ Art 7(1), *ibid*

²⁴ *ibid*

3.1.4 INVESTMENT PROTECTION AGREEMENT

Though the foreign investment in developing countries has increased, still the investors are not in a position for their confidence in the investment. It might be due to non-congenial legal framework or might be due to the lack of positive approach. Hence it is quite obvious to seek for some of the means which would create a sense of confidence in them.

In order to create a safe investment environment and a sort of guarantee for their investment, a way of investment protection agreement has emerged into the limelight in the arena of international investment.

In the process of making the Nepalese investment climate more congenial it has taken up a step for the protection of investment made by foreign parties. It may be pointed out that Nepal is willing to attract foreign investment in order to boost up its economy. Thus, it can be said that the investment protection agreement has essentially to play a vital role in the promotion of foreign investment.

Keeping in view the protection of foreign investment, the pact (Investment Protection Agreement) has been signed with UK, Germany and France, under which investments enjoy full protection and security.²⁵ The agreement also

²⁵ Foreign Investment Opportunities in Nepal, Ministry of Industries, 1994.

guarantees free transfer of payments such as capital profits and loans.²⁶

In the events of disputes concerning an investment, provision exists for its settlement through the process of Arbitration under the International Centre for the Settlement of Investment Dispute (ICSID).²⁷

A provision has been stipulated with regard to encouragement and creation of favourable conditions in one country for the nationals or companies of other contracting country. The main emphasis has been laid down in the full protection and security of investment by way of a fair and equitable treatment.²⁸ National treatment of the national or companies of other contracting country, within the territory of one contracting state has been the main thrust of the agreement²⁹ because of which if the investment of one contracting state suffers losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of other contracting state, the first contracting state shall have to accord treatment as regards restitution, indemnification, compensation or other settlement which should not be less favourable than it accords to its own nationals.³⁰

26 Ibid.

27 Art 8 Investment Protection Agreement.

28 Art 2 Ibid.

29 Art 2(1) Ibid.

30 Art 4(1) read with Art 3 Ibid.

A provision pertaining to expropriation states that the expropriation of investment except for a public purpose related to the internal needs should not be done. If, for the above mentioned purposes, the investment is expropriated, a provision of a prompt, adequate and effective compensation has been stipulated.³¹

A guarantee of unrestricted repatriation of the investment and returns has been accorded to the investor of the other contracting state.³²

By virtue of Art.8 of the agreement both the contracting states have given their consent to submit to International Centre for the Settlement of Dispute (ICSID) for the settlement of dispute by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1985.³³

Thus, it can be said that one of the most positive step taken by the government in order to promote foreign investment in Nepal is signing of pact with regard to the protection of foreign investment.

As such investment is increasing day by day in Nepal, in order to activate other countries to invest, it is required to enter into such investor protection pact with others countries

³¹ Art 5(1) and (2) Ibid.

³² Art 6 Ibid.

³³ Art 8 Ibid.

also. For doing this a selective measure with regard to the choosing of countries for such pact for desired investment from desired country can be adopted.

3.2 MULTILATERAL ARRANGEMENTS

Multilateral arrangement is equally important as that of bilateral agreement or arrangement in order to foster economic development in general and foreign investment in particular.

The investment made in a developing country by the developed country may have umpteen numbers of difficulties and a constant fear with regard to the non-guarantee of investment might become one of the impeding factors in the enthusiasm of a foreign investor. To curb this problem quite recently Nepal has become a member country of Multilateral Investment Guarantee Agency (MIGA). Of course the constitution of world trade organization has to have an impact on Nepalese investment climate.

3.2.1 MULTILATERAL INVESTMENT GUARANTEE AGENCY (MIGA)

MIGA was established on April 12, 1988 as a member of World Bank Group.³⁴ It has helped the developing countries in order to encourage foreign investment in two ways - 1) by providing investment guarantee against the risk of currency transfer, expropriation, war and civil disturbance and breach of contract by the host government and (2) by advisory service

³⁴ MIGA Annual Report 1993, MIGA, p.1.

to developing member countries on means of providing their attractiveness to foreign investment. It was formed in 1988 by 42 World bank member countries, which has expanded to 97 signatories.

MIGA is designed to encourage the flow of foreign private investment to less developed countries by mitigating political risks or non-commercial risks, associated with the project.³⁵ It issues guarantees including co-insurance and re-insurance against non-commercial risks in respect of investments in a member country which flow from other member countries.³⁶ Together with it carrying out of appropriate complementary activities to promote the flow of investments to and among developing member countries is the prime objective of MIGA.³⁷

Risks Covered Under MIGA³⁸

The following types of risks are covered under MIGA:

(i) **Currency Transfer**: Any risks arising out of restriction introduced by the host country with regard to the transfer of currency of host country into a freely usable currency or another currency acceptable to the holder of guarantee. It

³⁵ Ibid.

³⁶ Ibid, p.9.

³⁷ Ibid.

³⁸ Art II Convention Establishing Multilateral Investment Guarantee Agency 1985.

also covers the risk created by the failure of host country for such transfer within a reasonable time period.

(ii) **Expropriation:** Except non-discriminatory measures of general application which government normally takes for the purpose of regulating economic activities within the territory of host government, any other risk arising out of expropriation or other similar measures because of which the member country is deprived of the ownership or control of, or substantial benefit from his investment.

(iii) **Breach of Contract:** Any risk arising out of repudiation or breach by host government of a contract with a holder of guarantee, if the holder of a guarantee does not have recourse to a judicial or arbitral forum with regard to such repudiation or breach or a decision by such forum is not rendered within such reasonable period of time or such a decision cannot be enforced.

(iv) **War and Civil Disturbance:** The risk arising out of any military action or civil disturbance in any territory of the host country.

Nepal joined MIGA on September 23, 1993 with the expectation to create more favourable and congenial atmosphere with regard to the foreign investment in the country. Till now it covers the risk only in Khimti Hydro-Electric Project invested by Swiss investor and Nepal government. It is

expected to have more and more foreign investment with the help of MIGA.

3.2.2 WORLD TRADE ORGANIZATION (WTO)

Most developing countries impose certain conditions on foreign investors referred to as 'investment measures'. They impose obligations like use of specified percentage of locally produced raw materials or components, local equity requirement, export performance and control on imports requiring foreign investors to use domestic supplies. The main idea behind these measures is to regulate the operation of foreign investors and to protect local industries from unfair competition.³⁹

In order to expand and further liberalise world trade, it has been an argument that certain investment measures can cause trade restrictive and distorting effects and should therefore be removed.

The emergence of WTO, at the wake of restructuring of the international economy, has been welcomed by most of the developed and developing economies. It has been set up under the provisions of the Uruguay Round Global Trade Accord concluded in Geneva on 15th December 1993, which provides a forum for multilateral trade negotiations, conducts periodic

³⁹ Harrick and Kindelberger. *Economic Development*, McGraw Hill Book Company 1983, p.475.

review of member-country trade policies and cooperates with the World Bank and International Monetary Fund.⁴⁰

The provisions with regard to the investment measure have been dealt under the TRIMS agreement under GATT, whereby the removal of such investment measures inconsistent with the provisions of GATT Rules is emphasised. On the other hand, because of the peculiar needs of developing countries, such countries are free to deviate temporarily to a certain extent.⁴¹

As regards national treatment of foreign enterprise a provision has been stipulated under which the contracting parties are bound to provide national treatment to the enterprise of another contracting party's enterprise.⁴²

With regard to the protection of intellectual property rights, a separate agreement has been entered into on the auspices of GATT, which in other words, can be referred to as 'Trade Related Intellectual Property Rights (TRIPs), whereby every member country is required to protect all types of intellectual property rights.⁴³ No differentiation between

⁴⁰ Mittal D.P., Law Relating to Copyright, Patent and Trademark and GATT, Taxmann Allied Publications (P) Ltd., 1994, p.460.

⁴¹ Art 4 Agreement on Trade Related Investment Measures, GATT Final Text.

⁴² Art 2 Ibid.

⁴³ Art 27(1) Agreement on Trade Related Aspects of Intellectual Property Rights, Ibid.

process and product patent has been made and all are subject to a protection for a term of 20 years.⁴⁴

Although Nepal is not a member country of WTO, it has already envisaged all the measures except product patenting in its legislative framework. As for instance TRIMS is not at all existed as investment in all the areas is open for a foreign investor and there is not even compulsion with regard to the export and 'local content'. National treatment to foreign investment enterprise is also accorded and the same facilities and incentives have been accorded to a foreign investment enterprise as that of domestic enterprise.

So far intellectual property right is concerned, only the process is patentable in Nepal and the protection is granted for a period of 21 years for all kinds of patent registration. This implies that there is nothing inconsistent with TRIPs in the domestic legal framework except product patenting. Upto now, the statistics shows that the number of domestic patent is only 15 while foreign patent is 20. It shows a lower level of technological development. If product patent also be granted, it will be a stimulant in the system to have a better technological development. Immediately it may not yield such a drastic difference, but in long run it is beneficial to the country for its development. For, this will be a factor influencing in the field of technology transfer too.

⁴⁴ ibid.

Thus, the legal frame-work of Nepal is nowhere inconsistent with the provisions of GATT final text except for product patent and has provided all sorts of facilities to a foreign investor, which WTO intends from other countries to offer.

CHAPTER - IV

CHAPTER IV

PROBLEMS IN THE PROMOTION OF FOREIGN INVESTMENT IN NEPAL¹

Though there are few cases of foreign investment and technology transfer in Nepal and it has forwarded steps to enhance the foreign investment by way of a host of incentives and facilities, as has been stated earlier, still the desired amount of investment in the desired area to promote the multifarious development has not been fructified.

As it is a new concept for Nepal, both the government and foreign investors are in a state of perplexity with regard to so many aspects. For instance, the government is not being able to identify the area where such investment can play a vital role in the development of the economy. Similarly foreign investors are also reluctant to invest because of the lack of proper information with regard to the legal framework and technical manpower along with marketing facilities. Undeveloped infrastructure has always been an obstacle for a foreign investor.

For convenience and better understanding of problems, they are dealt separately under two heads. Firstly it is dealt with regard to the problems faced by the government, and secondly the problems faced by foreign investors. Finally, the rooms for improvement are identified.

¹ This Chapter is mainly based on the interviews with different concerned government officials and various industrialists.

4.1 Problems Faced by Government

Though a number of policy improvements have been made with regard to the foreign investment promotion in Nepal, still the government has been facing problems which can be summarised as follows:

(a) Identification Stage:

At the identification stage itself government has been facing the problem. The main problems are the following:

(i) **Identification of Area:** Because of geographical peculiarity and odd situation of Nepal having open boarder with India and land locked position of Nepal coupled with the extreme poverty, the required amount of foreign investment in the desirous area is also not coming up. It is pushing the country towards the dependency rather than self sufficiency.

Though the industries of national priority have been fixed in the annexure of the Industrial Enterprises Act, nowhere in other Acts the priority list for the foreign investment has been stipulated. If the priority list for the foreign investment is fixed, it will be easier for the government to attract the foreign investment in the desired area.

(ii) **Identification of Genuine Investor:** The motive of all the investors to invest in Nepal is not similar. Bonafide as

well as malicious intention can be found on the part of investors. Though all the investors are attracted by the profit motive, even then the malicious motive can be found. The government at this stage has remained completely unconcerned about their motives. In most of the cases it is found that the investors are using Nepal as a tax heaven, and are able to siphon the national economy. On the other hand, Indian investors are found to have a motive of acquiring the nationality certificate so as to become the citizens of Nepal as well as India. Thus, because of the problem regarding the identification of investors, the genuine investors are getting lots of hassles to get their projects approved.

(iii) **Identification of Technology:** The poor knowledge of recent technological development in the world associated with insufficient technical manpower, have been able to pose a problem with regard to the identification of the technology. The problem has been further geared due to the lack of research and development (R & D) in the country.

It is possible to get obsolete technology rather than modern and efficient technology due to lack of efficient manpower and sufficient knowledge on the subject matter. This is sufficient to push a country centuries behind in the industrial development.

(b) Implementation Stage:

The problems faced by the government at the stage of implementation, that is to say, the working of foreign investment companies within the country are categorized under this head.

(i) Lack of Legislation: The dearth of legislation with regard to the proper direction to foreign investors is another problem faced by government. Because of the modern technology, the indigenous technological development is being marginalised. Though the Constitution of Kingdom of Nepal states about the promotion of indigenous technological development, nothing seems to have been done to promote it. A proper legislative framework in order to enhance the local technological development is very much needed.

Protection of environment and the diminision of possible devastation or the proper compensation to the affected section by way of legislation in the event of catastrophe has become indispensable in order to have a healthy growth of the industries. The lack of legislations like Monopolies and Restrictive Trade Practices (MRTP) and Consumer Protection has been felt in this regard, in the absence of which foreign investors are being able to exploit the general masses of people.

4.2 Problems Faced by Investors

As has already been discussed that foreign investors are attracted by hassle-free environment for investment, Nepalese government has put its effort in order to promote the foreign investment in the country. Even though, presence of so many hurdles and inconveniences, the affirmative steps forwarded by the government is being proven faded. The problems faced by the foreign investors are of umpteen variety. It ranges from unavoidable geographic constraints to avoidable internal arrangement. Despite of unavoidable circumstances, if the internal arrangement is made a positive one, the foreign investment can be flourished.

For the convenience the problems faced by them (foreign investors) are classified under the following heads:

(a) Identification Stage:

At this stage a foreign investor finds the following difficulties:

(i) Identification of Area of Investment:

When a foreign investor steps in regarding his investment, he is completely unaware of the feasible area, where he can invest in order to get a good return. He is virtually in a state of darkness. Due to the lack of preliminary survey of feasibility or the appropriate

information the burden lies on him even to make feasibility study, which may become a factor for their repulsion.

(ii) Identification of Local Partner:

Even if he takes the pain of feasibility study, he might not be able to make 100 per cent of equity investment which would compel him in search of a local partner. Due to the lack of proper information and track record of local entrepreneur, the foreign investor faces a number of problems with regard to the identification of a perfect local partner. Moreover, the requirement of minimum of three persons in order to establish a company becomes a burdensome task for a foreign investor.

(b) Implementation Stage:

At this stage foreign investors seem to have a number of problems which can be put under the following folders:

(i) Lack of natural resources and technical manpower:

The lack of natural resources has become one of the challenging obstacle for a foreign investor. The non-availability of such resources is one aspect, but even the available natural resources are not explored properly due to which a foreign investor has to spend money for the import of raw materials from other countries which, because of non-exploration remains untouched and unutilized. The government

should reprioritize the industries and should give more concession to the excavation industries.

The lack of technical manpower is another aspect which necessitates the foreign expatriates in order to work in Nepal. In order to curb this a huge mass of the technical manpower is required to be trained. A proper education channel should be set up in the country in order to produce such technical manpower. Thus, for the government to play a role as facilitator, it is essential to enhance the education system and promote technical institution.

(ii) Lower Infrastructure Development:

The lower infrastructure development is another drawback which is creating a condition of reluctance on the part of foreign investors. Though one window policy has been adopted by the government, it is quite often criticized to have multi-doors. The Export Processing Zone is another area of concern for the foreign investors, the lack of which has also further influenced the foreign investors.

(iii) Bureaucratic Harassment, Discriminatory Treatment and Corruption:

Though the policy framework has been changed and the system has taken a leap from protective measure to open and liberal policy, still the hangover of past, that is to say red-tapism, has not been able to be wiped out properly from

the system. A foreign investor has to face umpteen number of bureaucratic harassment as if they have come to snatch their grasp. On the other hand, while giving the facilities and concession too they are discriminated. It has been the feeling of the foreign investors that even for the facilities clearly accorded by the Act, they have to knock the door of judiciary in order to enjoy it. The corruption prevailing in the system has been another means of harassment.

Lowers domestic market and land-locked position of Nepal has also the bearing on the motive of foreign investors to invest in Nepal, but these are unavoidable circumstances and most of the foreign investors are familiar to the fact and they are not troubled by these problems.

4.3 The Areas where the Response is Required

As it has been seen that in order to develop the industrial sector Nepal has put its effort by liberating its economy to a certain extent, but nowhere it seems to materialise the commitment of the constitution with regard to the promotion of indigenous investment. Indigenous industrialisation requires a certain level of protection which in order to develop 'hand in hand' with foreign investment companies.

There can be a number of measures by which foreign enterprises might have advantages over the domestic enterprises. These measures may be fair or unfair. As a

yardstick certain legislative framework is required to invalidate the unfair means adopted by certain sect of industries or companies, which in other way provides ample opportunity to domestic industrialisation to be protected and come down in a fair competitive environment. National interest has also to be protected from the unfair encroachment of foreign investment companies, which necessitates a number of measures by the action of which a balanced growth of both the sectors can be achieved.

Anti-Monopoly Act, Consumer Protection Act, laws relating to public liability insurance are certain areas by the action of which a balanced growth can be achieved to avoid the concentration of economic power in the hands of few in a fair just and equitable way. It is also the fundamental duty of state enshrined in the Directive Principles of State Policy of the Constitution of Kingdom of Nepal. With regard to the aforementioned areas government seems to be completely ignorant. This ignorance is because of the low level of industrialisation within the country.

As the country has already opened up its economy and started to receive foreign investment projects, it has become an area where the delayed response can become another factor for the havoc. Hence an immediate response is required from the government with respect to proper legislative framework, in order to prevent malfunctioning of industries due to unhealthy competition.

Foreign indirect investment is another area where the government has not been able to adopt any policy or legal framework. A vast capital can be acquired by this process. Therefore, the government is also required to put its effort in aforementioned areas for the proper functioning of the economy at large.

(a) Laws on Monopoly and Restrictive Trade Practices

Concentration of economic power in the hands of few is directly related to the prevailing gulf between the haves and have nots. It is the responsibility of a state to distribute the income from the rich class to poor for their upliftment. The constitution of the Kingdom of Nepal consists this goal as the directive principle of state policy. The concentration of economic powers in the hands of few necessarily means the deprivation of a mass of people, who are economically weak, from their participation in the economy.²

The companies or enterprises having enormous economic strength are sometimes successful in marginalising competitors and monopolising the market. After the achievement of which they become a factor in the deterioration of the market by maintaining prices at an unreasonable level, by preventing competition in the production, supply or distribution of goods or services.³ There are a variety of measures which, if

² Singh A., Law of Monopolies and Unfair Trade Practices, 3rd Edition, Eastern Book Company 1993, pp.4-5.

³ Ibid p.6.

adopted, will unreasonably increase the cost of production or hike the price of a product or services. To curb these market evils laws on monopoly and restrictive trade practices has come into the picture, because of which the investors freedom of action is regulated.⁴

Investors in order to monopolize the market may adopt measures which in the common business field is termed as restrictive trade practices. Mitigation of this problem necessitates a law which has a direct relation with the subject matter.

Though Nepal has a very low industrial base and low domestic market, it has not yet come into the effect of such practices. But on the other hand, the opening up of the market to the foreign investors points out to such kind of practices. A timely thought can prevent such factors which might devastate the economy in general.

As fore warned is fore armed, Nepal has to be fore armed to ensure such happenings mitigated properly and timely. This has necessitated a legislation to be enacted before the problem may arise and make the machinery defunct.

(b) Consumer Protection and Foreign Investment

Gone are the days when the principle of '*caveat emptor*' was the slogan of the time. In theory market driven force by

⁴ Ibid p.1.

its invisible hands automatically diminishes the substandard products which in the competitive atmosphere of open market economy will not be able to compete with the high quality products. But the practice is something different. In the absence of well equipped and equal competitor foreign investors are able to drive the market in direction wherever they want. Even the substandard and low quality products are capable of being sold in high prices. In order to curb this problem the Consumer Protection Act has been evolved.⁵ With the action of this Act, the ill-informed incompetent consumers are being protected from the products or services which are substandard. It is the presumption of the Act that the consumers are willing to pay only for the quality products and services. If he pays, he deserves the best.

The foreign investors do not come to invest in other country only for the production of exportable goods, but they are equally attracted by the consumer market of the host country. Hence the freedom of the action of foreign investors is regulated by way of Consumer Protection Act.

Nepal, in the lack of consumer protection legislation may have such kind of problem in future. Hence, it is exigent to enact a legislation pertaining to the protection of consumers.

⁵ Vats R.M.. Consumer and the Law. Universal Book Traders 1994, p.2.

(c) Foreign Indirect Investment

In the process of generation of foreign capital, foreign indirect investment is equally important as that of foreign direct investment.⁶

Till today nothing has been done with regard to this indirect investment. The present status of industrial development also does not indicate towards the urgency but in the near future together with industrial development, indirect investment by way of GDR and ADR issues or offshore banking may be relevant.

Therefore, it is necessary to think from now itself in order to curb the problems foreseeable. On the other hand, Nepalese entrepreneurs or investors are restricted from investment abroad. An Act Relating to Restriction on Investment in Foreign Countries 1964 empowers the government to exempt certain restrictions by specifying the types of investment, limit, duration and other necessary conditions with regard to such investment.

This Act can be proved good because of the prevailing special circumstance of Nepal but because of lack of mechanism relating to the tapping of such investment made by investors the Act has become inefficacious and investors are investing abroad without hesitation. Hence such a obsolete Act should

⁶ Apte P., Globalisation of Indian Capital Market, a paper presented in a seminar on Capital Market, Bangalore 1994.

be repealed. As Nepal has already adopted an open and liberal policy, such an Act seems to have a negative impact on the entrepreneurs investing abroad.

(d) Public Liability and Environmental Protection

It is true that foreign investment brings with it a number of advanced technologies but it is also a matter of fact that along with new and advanced technology, a number of problems and hazards too is brought in, which cannot be mitigated with a lower technological knowledge of the host country.⁷ Even people remain unaware of the hazard when actual hazard has already been taking place because of their poor knowledge on the subject matter.

In the dearth of appropriate legal framework, if such catastrophic effects happen to occur, then no one becomes liable in order to soothe the masses of innocent people who are inhabitants of such locality where the catastrophe occurs. the incomparable environmental degradation and devastation remains unabated. The distortion created by such hazardous calamity will be translated into the curse of god and the sufferers of such catastrophe remain unheard and unrepresented.⁸

⁷ A Vietnamese Proverb - "When you open the window not only the wind but the mud and dust may also come in". cited by Clarke M., Protection and Foreign Investment in the Asia Pacific Economic Co-operation Region, Journal of World Trade, Vol.29, No.2, April 1995, p.105.

⁸ Baxi U., Address delivered at a seminar on Changing Investment Climate in India (1992) 4NLSJ.

In this context environment laws and policies an Act relating to Public Liability Insurance essentially has something to do for the better protection of the flora and fauna of such locality.⁹ The endangering effects of such conduct can be minimised or well compensated. That is what we should look into.

In the arena of expanded world trade and multinationalism such happenings are of quite frequent occurrence and history has evidenced the catastrophe and aftermaths. The glaring example in this regard is the Bhopal Tragedy case where thousands of innocent victims lost their lives and even who survived the catastrophe are leading disrupted, disabled, dislocated and impoverished life. In such pathetic situation can not a multinational whose irresponsibility caused all the catastrophe be prosecuted and made liable for damages? Again a series of questions may arise with regard to the liability. Is it a liability of the local company for the negligence in operating the plant and failing to provide sufficient warning to potential victims of the catastrophe? Is it a liability of the parent company for its negligence with respect to training of persons to operate the plant, designing the plant or controlling its subsidiary. It can be argued that the government or regulating authority of the host country or the local government of such locality where such plant is situated is liable in this regard for being negligent in regulating the safety conditions in the

⁹ Ibid at p.107.

plant or for giving permission to establish such a plant without knowing the consequences.¹⁰

A clear policy and a transparent act in this regard is necessitated by the history of catastrophe.

Transportation of hazardous waste is another aspect which is necessary to be dealt here. Umpteen number of hazardous waste products may come out from different kinds of plants which, if not managed properly, may create numerous catastrophes.¹¹ In order to compete with the challenges of tomorrow, it is suggestive to be prepared from today itself. So, as the protective measure most of the countries in the world today have shown their diligence in order to manage the waste products which is otherwise another major cause of devastation. Identification of such hazardous wastes and proper management and transportation of such wastes has to be done cautiously while taking them to the dumping sites.

Recycling of waste products has become a matter of pride in the present day context. Though as a way to make the world pollution free and in order to protect the environment the recycling plants are being established. It is found to be one of the excellent ways to preserve the nature. Simultaneously, in the name of recycling, the third world today has become a dumping site for the so called industrialised countries. In

¹⁰ Rosencranz et.al., Environmental Law and Policy in India, Cases, Materils and Statutes, Tripathi 1991.

¹¹ Ibid.

the name of recycling the waste products those garbages are dumped in the third world and are recycled in the recycling plant in the third world. Hence, the restriction, by way of legislation, on the importation of hazardous waste products, even for the purposes of recycling should be imposed so as to help stop the country to be a dumping site of the developed country.

Though, environmental protection has been accorded a prime importance in the constitution and has been recognized as a subject matter of public interest litigation, the lack of environmental protection Act and Public Liability Insurance Act has made the task more complicated. As Nepal is heading towards the maximization of foreign investment, still there is lack of such Acts which regulated for the better protection of environment and the people living in that environment. The urgency in order to enact the legislation is felt in this regard.

CHAPTER - V

CHAPTER V

EPILOGUE

The popularity of liberalised trend in todays world indicates that perhaps it is a new model of development. After the collapse of the former USSR, this emerging trend has got a prominent footing. With the advent of this, perception towards foreign investment has been changed with respect to the promotion of it rather than prevention. This resulted in easing of reservation against it and the legal frame work is made more liberal and transparent one.

Foreign investment in today is perspective is seen as a spur in economic development along with social and economic upliftment of the people. Nepal being a small, land-locked, poor country having a low technological development, has no alternative rather than inviting foreign capital for its multidimensional development. Even the available natural resources require a foreign hand for its exploitation in an efficient manner.

By realising the bitter fact of its underdevelopment, Nepal has put its efforts in order to liberalise the legal frame-work to suit the present day requirement by making the atmosphere for investment a congenial and liberal one. This has been accorded so as to achieve a maximum benefit from the efficient utilization of foreign capital in terms of national development. One of the chief factors among various factors influencing directly or indirectly posing

hurdle in the flow of foreign capital and technology, is the loosely formulated policy frame work and myopic legal system.

In order to achieve a goal of faster development of the nation, maximising foreign capital investment is equally important as that of direction of its flow. At the outset it should be the effort of the government to maximise the flow of foreign capital and then a proper direction or channeling of it would add further impetus in the development process.

5.1 Maximising Foreign Investment

The progressive step taken by the Government of Nepal, with modification of its legal regime in order to receive foreign investment for the achievement of objective of increased industrial production to meet the basic need of people, is appreciable. It has been the aim of government to create sufficient employment opportunity and improve balance of payment through increased import substitution and export.

Despite of so much of efforts, the hurdles, as communicated in preceding heading, role of foreign investment in the development requirement is not being fructified. If obstacles are done away with the goal of maximisation of foreign investment can be achieved.

The exclusion of cottage and small scale industries from foreign investment is justifiable but even excluding medium scale industries having fixed asset less than Rupees two crores is a barricade in the maximisation of foreign investment. This requirement bars the medium enterprise of foreign origin to invest in the country. It also bars service industries which might not require such a huge sum of fixed asset in order to operate. The business of industries can be performed by Nepalese citizen through proprietorship also. Foreign investment should be encouraged in medium scale proprietorship firms or one man companies, if of course allowed to be registered.

Till now foreign investment is permissible only in industrial and banking sector, and quite recently the power sector has also been opened up. Other sectors of infrastructure sector as well as financial service sector required to be opened for receiving foreign capital or assistance. In order to help develop a country in a dynamic way, such areas should not be kept away from foreign investment

So far the facilities and incentives are concerned, although the Act equally provides for the investors, domestic as well as foreign, without any prejudice, the bureaucratic harassment and discriminatory treatment in providing incentives still stands in the way of industrial growth.

Identification of local partner is one of the problems faced by the foreign investors. Publication of names and address of various domestic investors desirous to collaborate with foreign enterprises in various areas together with their track record, would facilitate the potential foreign investors to acquire the information regarding a suitable partner. In order to maximise foreign investment in export oriented area, the environment for the export trade should be made congenial one. For the attainment of this, the trade relation between Nepal and its neighboring countries India and China should be reviewed and preferential treatment of Nepalese product into the market of these countries should be sought to be incorporated in the treaty without any pre-condition of material and labour content.

Similarly, Nepal should put its effort to get the transit facility provided by India as a matter of right. This would create a situation of serenity with regard to the transit of goods for export to the countries other than India. The subsequent effect of this will be in the maximisation of foreign capital in export oriented area.

As Nepal already has entered into this sort of agreement with India, Nepal should endeavour to enter into agreement regarding the avoidance of double taxation with other countries according to the volume of trade.

Another aspect in maximisation of foreign investment in the investor's protection agreement. This agreement has been concluded by Nepal with UK, Germany and France. Now it should be the effort of the country to enter into such agreement with other countries which has investors in Nepal. The institutionalisation of arbitration process through a domestic institutional arbitral body is another factor which, by giving additional advantage over present ad hoc system can give a sense of confidence to a foreign investor. It will in other way help maximise the foreign investment.

5.2 Foreign Investment in Desired Area

The specification of priority areas for the foreign investment and granting of more facilities for the investment in such areas can be one of the better means to divert the flow of investment in desired area. In order to suit the development requirements of a country such prioritization of areas should be envisaged in the Act. Though Act specifies the areas of national priority, it is again made without considering the feasible areas of investment. A due consideration to the areas of interest of foreign investors should also be given, because of which a desired amount of investment in the desired area can be obtained. While setting the priority area for foreign investors along with due consideration to the interest of investors, the emphasis should also be given to the building of infrastructure, as it is considered to be one

of the most essential factors for a developing country like Nepal. Together with these two steps, labour intensive industries could be made a point of attraction for investors by way of added facilities and concession.

Investment Promotion Board working for the promotion of industries is over bureaucratized and the representation of private entrepreneur in the Board is very low. As the strategy can be achieved from people participating in the field, the over bureaucratized body would not be able to suggest the ways and means for future development. Thus, the over-crowded bureaucratic body should be reduced to a minimum and the participation of private entrepreneurs should be increased which will be another step in order to allocate the strategic area for the investment. It has to be an independent body.

5.3 Necessity of Regulatory Regime

In the present trend of liberalization of economy the role of state is brought down to a minimum in economic affairs. Certain quarters of the society have expressed their dissatisfaction in this regard. It is true, that in a developed liberal democratic country state may take a minimum role but in the prevailing situation of extreme poverty and underdevelopment, a state like Nepal cannot permit its government to play exclusively a role of facilitator. The state has to assume more responsibility of a welfare nation. The Constitution of Nepal reposes the

responsibility on the state to uplift the social as well as economic status of its people. Thus it becomes a necessity to frame a minimum regulatory regime in order to make the foreign capital work in a direction of development requirement of the country. The regulatory regime, thus, for the purpose of directing the investment in a productive area can be imposed in two-fold way: (1) by regulating MNC activities, (2) by protecting the domestic enterprises from unhealthy competition and unfair practices.

While imposing regulatory regime it should not be in the form of controlling device and the protection for domestic enterprises should not over protect which results in pampering of domestic enterprise. MNCs should be directed to invest in an area where the development planning requires and the local enterprise should be protected from unfair practices of MNC. For this purpose laws on monopoly, consumer protection, public liability and environmental protection should be enacted with urgency. While protecting domestic enterprises with certain level of protection at the initial stages it should be lifted soon the enterprise stabilizes. An Act relating to the rehabilitation of sick industrial unit is essential in this regard.

Research and Development (R&D) is another factor where a supportive hand of government is required to be extended. The development of local industries in the absence of such a facility cannot be ensured. Thus for

domestic technological development, government should through proper education policy produce a qualified manpower and make the hand available to the domestic industries.

In order to have the technological development the horizon of patent protection should be broadened by allowing the product patent too. A separate enactment for the technology transfer purpose is beneficial. In order to do so the provision in foreign investment and technology transfer Act regarding technology transfer should be separated.

Thus a proper legal regime should be ensured with a well designed industrial policy in order to attract foreign investment.

RECOMMENDATIONS

1. The Industrial Policy should be reformulated in order to give priority to the industries yielding long term benefit together with import substitution and export promotion. A separate Technology Transfer policy should be drafted.

2. The foreign investment policy should be reformulated to maximise the foreign investment.

3. New legislation should be passed with urgency on the following:
 1. Consumer Protection
 2. Environmental Protection and Public Liability Insurance
 3. Monopoly and Restrictive Trade Practices
 4. Rehabilitation of Sick Industrial Unit
 5. Foreign Indirect Investment
 6. Technology Transfer

4. The following amendments should be incorporated:
 - a) Foreign Investment and Technology Transfer Act
 1. Priority areas exclusively for foreign investment should be incorporated in the Act.

2. The Act should recognize foreign investment in other infrastructural areas and financial services including insurance sector.
3. The requirement of Rs.2,00,00,000 fixed asset should be lifted in order to facilitate other medium scale industries to receive foreign investment.
4. Foreign investment should be made accessible for proprietorship firms through joint ventures.
5. The provision for transfer of technology in Foreign Investment and Technology Transfer Act should be separated.

b) Industrial Enterprises Act

1. Added facilities and incentives should be granted to the investment in 'pioneer area'.
2. The Industrial Promotion Board should be made an independent body with more representation from the industrialists.
3. The representation of private entrepreneurs should be increased in one window committee.

c) Patent, Design and Trademark Act

The area of patent protection should be broadened by allowing product patent too.

d) Arbitration Act.

The Arbitration Act should be amended to incorporate institutional arbitration.

5. The following Act should be repealed.

a) An Act Prohibiting Investment in Foreign Countries.

6. Modification suggested in Treaties and Agreements

a) Endeavour should be made by the government to obtain to incorporate a preferential treatment for Nepalese products into Indian market without any preconditions of material and labour content.

b) Endeavours should be made by the government to obtain the facility of transit provided by India as a matter of right without making it subject to renewal.

c) Double Taxation Avoidance Agreement (DTAA) should be entered into with other countries too. Priority should be given relying on volume of trade.

d) Investor Protection Agreement should be entered into with other countries having potential investors.

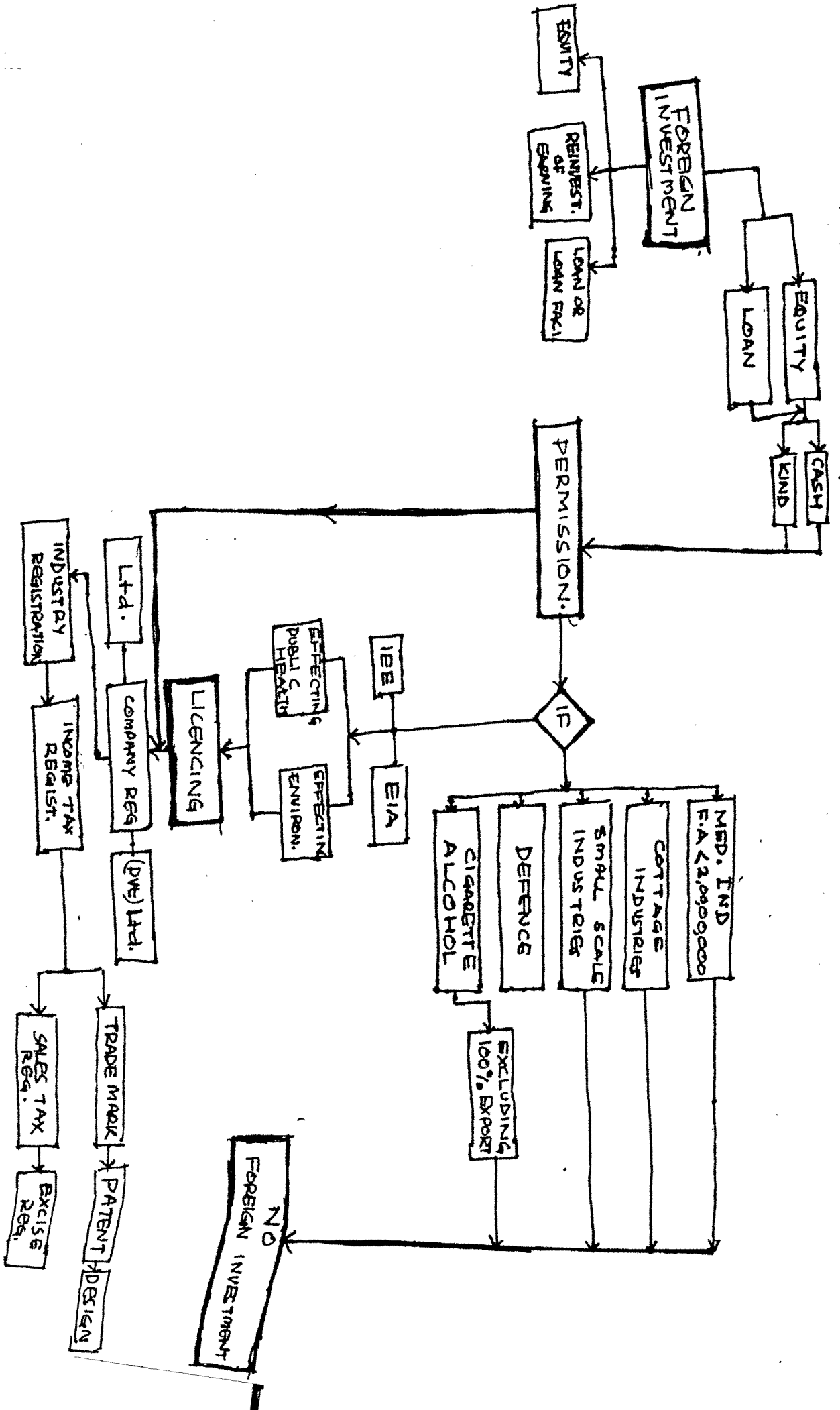
7. The following policy recommendation should be considered:

a) Government should try to increase the number of qualified technical manpower by means of proper education policy, specially in the area of telecommunication, electronics and computer science.

b) Government should endeavour to increase promotional drive and communicate with developed as well as developing market economies about the information on investment.

c) Due to small resource base and small domestic market big multinational companies may not be attracted. Therefore, the possibility of foreign investment from the countries of South Asian region should be emphasised.

ANNEXURES



**FOREIGN
INVESTMENT
AND
ONE-WINDOW POLICY
1992**

**HIS MAJESTY'S GOVERNMENT
MINISTRY OF INDUSTRY
SINGHA DARBAR**

ANNEXURE - II

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Foreign Investment and One-Window Policy 1992

1. Background:

The wave of changes in the world economic order has affected all national, big and small. In the process of adjusting the economy in line with these changes neighboring countries have also adopted an open and liberal policy for strengthening their economic system. Accordingly, it is necessary for Nepal to introduce timely changes and reforms in various sectors of its economy to introduce dynamism in the process of economic development. In this context, it is opportune for us to make foreign investment attractive by framing a timely, liberal and open policy. The elected government has expressed strong commitment to this goal from the very beginning. Accordingly, this policy document clearly explains the objectives of foreign investment, the forms of such investment, their procedural aspects, the facilities and concessions to be provided to them, the quick

and efficient administrative and institutional services to be made available through an one-window system and such other aspects with the belief that implementation of this policy will lead to the import of capital, modern technology, management, technical skills, access to international markets, development of competitive attitudes and awareness about increasing productivity, and thereby help in the development of an industrial culture in the private sector.

2. Objective:

- 2.1. To build a strong and dynamic economy by generating additional opportunities for income and employment through expanding productive activities.
- 2.2. To increase the participation of the private sector in the process of industrialization .
- 2.3. To increase productivity by mobilizing internal resources and materials in productive sectors and by importing foreign capital, modern technology management and technical skills.
- 2.4. To increase the competitiveness of Nepalese industries in international markets.

3. Forms of Foreign Investment :

- 3.1 Equity investment made by foreign investors in the form of foreign currencies or capital assets and reinvestment of the income therefrom;
- 3.2 Loans obtained in the form of foreign currencies or capital assets.
- 3.3 Use of rights, specialization, formulae processes and patents relating to any technology of foreign origin.
- 3.4 Use of foreign-owned trade-marks, good will.
- 3.5 Use of foreign technical, consultancy, management and marketing services.

3

4. Permission for Industries to be Established under Foreign Investment :

- 4.1 Foreign investment in the industries classified in annex 1 shall not be permitted. In case of other industries, permission for foreign investment should be obtained.
- 4.2 Foreign investment will* be permitted up to 100% in large and medium scale industries.

- 4.3 Permission may be granted for the transfer of technology in cottage and small industries.

5. Provision for Repatriation :

Foreign investors who have received permission to invest in convertible currency can repatriate the following amounts outside Nepal at the prevailing rate of exchange.

- 5.1 The amount received by sale of the whole or any part of the equity investment.
- 5.2 The amount received as benefits or dividends from foreign investment.
- 5.3 The amount received as payment of principal and interest on foreign loans.
- 5.4 The amount received under an agreement for the transfer of technology.
- 5.5 The amount received as compensation for the acquisition of any property.
- 5.6 Foreign experts, working in Nepalese industries with prior approval from countries where convertible currencies are in circulation, shall be permitted to repatriate in convertible currency

up to 75 percent of the amount received by them as salaries, allowances, etc.

6. Facilities and Concessions :

- 6.1 The following facilities will be granted to industries established with foreign investment, without prejudice, to avail the additional facilities, if any, available under the Industrial Enterprises Act.
- 6.1.1 Interest income on foreign loans will be taxed at a rate of fifteen percent only.
- 6.1.2 Royalties, technical and management fees will be taxed at a rate of fifteen percent only.
- 6.1.3 No income tax will be levied on the income earned from exports.
- 6.1.4 Industries established with foreign investment are entitled to enjoy all the facilities and incentives including income tax facilities provided to local investment under the Industrial Enterprises Act.

7. Other Facilities :

- 7.1 Facilities on Electricity- Industries will be given priority in the supply of electricity. No fee will be

- charged if an industry generates electricity for its own use.
- 7.2 Relief from Double Taxation- For the purpose of avoiding double taxation on incomes of foreign investors, HMG will take necessary action to conclude agreements for the avoidance of double taxation with the countries of the concerned foreign investors.
- 7.3 Custom duty, excise duty and sales taxes levied on raw materials and auxiliary raw materials of export oriented industry will be reimbursed to the exporters on the basis of the quantum of exports within 60 days from the receipt of the application for such reimbursement.
- 7.4 Industries exporting 90% or more of its total production are entitled to enjoy the same facilities provided to industries established in the Export Processing Zone. The bonded warehouse facilities will also be continued.
- 7.5 In case an industry sells its product within the country in foreign currency, the excise duty levied on the quantity so sold and the custom duty, excise and sales

- taxes levied on the raw materials used in such products shall be reimbursed to such industry within 60 days upon the receipt of application of such reimbursement.
- 7.6 Custom duty, excise duty and sales taxes levied on the production of intermediate goods used in the production of exportable goods shall be reimbursed to the exporter on the basis of the quantity of goods exported within 60 days from the receipt of the application for such reimbursement.
- 7.7 Priority will be given to arrange infrastructure facilities required for the establishment of industries.
- 7.8 Government land and land within the Industrial districts will be made available to industries for the establishment of industries on a priority basis.
- 7.9 No intervention will be made in fixing prices of the products of any industry.
- 7.10 No taxes will be levied on machinery and equipment, raw-

materials and finished products of industries established within the Export Processing Zone.

8. Visa arrangements :

- 8.1 A non-tourist visa will be granted to a foreign investor or his authorized representative as well as their dependents to stay in Nepal for the period during which a foreign investor maintains his/her investment.
- 8.2 A non-tourist visa for six months will be granted to any foreign investor who has come to Nepal to undertake research and study with the purpose of investing in Nepal.
- 8.3 If any foreign investor makes a lump sum investment equivalent to more than US\$ 200,000 in Convertible foreign currency, the investor and his/her dependants will be granted permanent resident visa for the period he/she maintains his/her investment in the industry.
9. Industries not to be nationalized - no industries will be nationalized.

10. Arbitration :

- 10.1 If the foreign investor, the concerned industry and the Department of industry fail to settle among themselves any dispute concerning foreign investment, it will be settled by arbitration.
- 10.2 Arbitration will be held according to the prevalent arbitration rules of the United Nations Commission for International Trade Law (UNCITRAL).
- 10.3 The arbitration will be held in Kathmandu.

11. Arrangements Relating to the One-Window System :

The following arrangements will be made to provide services through an one-window system to the industries operating under foreign investment.

11.1.1 Permission and Registration :

In order to provide in quick and effective way the approval, facilities and other administrative service to be established under foreign investment or technology transfer agreements and in order to establish effective co-ordination among various agencies. the

Department of Industry will be designated as an one window servicing agency with the industrial Promotion board as a focal point as spelt out in the industrial Enterprises Act.

- 11.1.2 The following one-window committee will be formed to provide infrastructure facilities such as registration, land, electricity, water and facilities on taxation, etc. under an one-window system for industries to be established with foreign investment.

One - Window Committee

- | | | |
|--|---|----------|
| 1. Director General, Department of Industry | : | Convener |
| 2. Joint Secretary, Ministry of Industry | : | Member |
| 3. Joint Secretary, Ministry of Finance | : | Member |
| 4. Joint Secretary, Ministry of Commerce | : | Member |
| 5. Chief Controller, Nepal Rastra Bank | : | Member |

- 11.1.3. The Department of Industry will inform the applicant of the decision of the Board on a foreign investment

project within 30 days from the receipt of the application.

- 11.1.4. The facilities and concession to which the industry is entitled to will be specified in the letter granting approval.
- 11.1.5. Application for the registration of an industry should be submitted to the Department of Industry within 35 days from the date of receipt of approval for foreign investment. The industry will be registered within 21 days from the date of receipt of the application.

11.2. Institutional Arrangements :

11.2.1. The Department of Industry will be reorganized and expanded with the aim of promotion of foreign investment, granting approval and providing facilities and administrative services through the one-window system. The Department will be upgraded and the status of the Director General will be made equivalent to the position of an Additional Secretary of HMG.

11.2.2. The power and authority relating to the provision of facilities and services of the agencies such as Ministry of Finance and its

Departments, Department of Commerce, Nepal Rastra Bank, Department of Immigration etc, will be delegated to the one-window committee.

11.3. Other Arrangements :

11.3.1. Industries established under this policy will continue to enjoy all time-bound facilities to which they are entitled even in any subsequent change is made in this policy.

ANNEX-

Industries prohibited for grant of approval under foreign investment.

1. Defence industries which produce items like military armaments,ammunition or explosive materials.
2. Cigarettes and Bide.
3. Alcohol (excluding 100% export or yeasted).

INDUSTRIAL POLICY
1992



HIS MAJESTY'S GOVERNMENT
MINISTRY OF INDUSTRY
SINGHA DARBAR

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In order to create an environment necessary to enable the private sector to play a principal role in the industrialization endeavour of the country, the public sector industries will mostly be privatized and no private sector industries will be nationalized. At the same time, Government will make no interference in fixing the price of industrial products other than creating open and competitive atmosphere. If necessary, during the initial period of industrialization, Government may establish, in the form of joint ventures either with the national or foreign private sector or foreign governments, some of the industries which the private sector is reluctant to set up but essential for the national economy as a whole. However, the shares owned by government and public sector corporations of such industries will also be gradually transferred to private sector.

A policy of determining the wages on the basis of productivity will be adopted. Assistance will be provided to rehabilitate the sick industries which are found feasible to rehabilitate but those sick industries which cannot be rehabilitated and will only

be burdensome for the national economy shall be allowed to close down after payments of wages and facilities to the labourers and employees.

Private sector participation will be encouraged also in community and private forest development, generation and distribution of hydro-electricity, and in construction and management of nursing home, hospital, power propelled railway, roads, bridges, tunnels ropeway etc.

1. Objective

- 1.1 To increase the contribution of industrial sector to the national economy through the enhancement of industrial production and productivity.
- 1.2 To emphasize the development of the industries utilizing local resources and industries which are export oriented.
- 1.3 To reduce the pressure of unemployment and under employment in agriculture sector through the development of labour intensive industries.
- 1.4 To adopt appropriate policy conducive to industrialization for

the balanced regional development of the country.

2. Policy

- 2.1 To develop the industries through healthy competition in order to utilize the comparative advantage of the country.
- 2.2 To protect industries through custom duties.
- 2.3 To eliminate, as per time-bound schedule, the protection accorded to the industries.
- 2.4 To develop industries utilising national labour, skill and resources as well as industries having national importance.
- 2.5 To accelerate the economic development through export of industrial goods.
- 2.6 To emphasize development of small, cottage and agro-based industries in order to create the employment opportunities particularly in rural areas.
- 2.7 To attract the foreign investment and to emphasize the transfer of advance technology and efficient management.

Strategies

- 3.1 To liberalise and simplify the procedures for the establishment, expansion and modernization of industry.
- 3.2 To provide all the necessary services to be accorded to industries through one window system.
- 3.3 To emphasize development of competitive import substitution industries in the country itself in order to reduce the pressure on the economy resulting from imports of daily consumer goods and construction materials.
- 3.4 To make the industrial protection system simple and transparent.
- 3.5 To encourage industrial investment in underdeveloped areas in order to achieve balanced regional development.
- * 3.6. To make necessary arrangements in order to meet as much as possible the requirement of skilled industrial manpower within the country and to

conduct all the related training and research programmes in an integrated way.

- 3.7 To provide additional incentives to the entrepreneur reinvesting his profit to his own industry or to other ancillary industries.
- 3.8 To carry out the restructuring programme with a view to rehabilitate the sick industry after reviewing the conditions of such industry.
- * 3.9 To make the necessary institutional arrangements for productivity improvement, through the upgradation of technical know-how and efficiency of the industries in order to compete in the free and competitive world market.
- 3.10 To take ahead the production and productivity improvement campaign.
- 3.11 To take measures to minimize the adverse effect to environment while establishing, expanding

and modernizing the industrial units.

3.12. To conduct skill development programmes for the development of skilled manpower.

3.13 To reserve the cottage and small scale industries for Nepalese only. However, technology transfer will be permitted in these industries.

3.14 To transfer the state owned industries to private sector in a phased manner.

3.15 To prepare and implement in a phased manner the guidelines relating to environment and pollution in order to control and mitigate the impact of industrial pollution on environment, residential area, national heritage etc.

4. Classification and Scale of Industry

For the purpose of industrial administration and facilities, industries are classified and scaled as stated below.

4.1 Classification

4.1.1 Manufacturing Industries - Industries which produce goods by utilising of processing raw materials, semi processed materials, or by-products or waste products.

4.1.2 Energy Based Industry - Industries generating energy from water resources, wind, solar, coal, natural oil and gas, bio-gas or any other sources.

4.1.3 Agro and Forest Based Industry - Business mainly based on agriculture and forest such as integrated sericulture and silk production, horticulture and fruit processing, animal husbandry, poultry farming, fishery, tea gardening and processing, coffee farming and processing, herbiculture and herb processing, vegetable seed farming, floriculture, agro-forestry, community and private forestry etc.

- 4.1.4 Mineal Industry - Mineal excavation, porcessing.
- 4.1.5 Tourism Industry - Tourist lodging and motel, hotel, resturant, resort, travel agency, skiing, gliding, water rafting, cable car complex, pony-trekking, hot air ballooning, parasailing, golf course, polo, horse riding etc.
- 4.1.6 Service Industry- Workshops, printing press, consultancy services, ginning and baling businesses, cinematography, construction business, public transportation, photography, hospital and nursing home, educational institutions, laboratory, air service, cold storage, etc.
- 4.1.7 Construction Industries - Road, bridge, tunnel, ropeway, flying bridge, railway, trolley bus and office, commercial and residential complex etc.

- 4.2 Addition in the classification of Industries - Industrial Promotion Board may add in the classification of industries.
- 4.3 Division of Scale
 - 4.3.1 Traditional Cottage Industry - The traditional industries mobilizing specific skill of local raw material or resources and labour intensive and related with national customs, arts and culture as mentioned in Annex - 1.
 - 4.3.2 Small Industry - Industries other than traditional cottage industries with a fixed capital investment not exceeding Rs. 10 million.
 - 4.3.3. Medium Industry - Industries with fixed capital investment of between Rs. 10 million and Rs. 50 million.
 - 4.34. Large Industry - Industries with the fixed capital investment more than Rs. 50 million.

5. Industrial Licensing and Registration

5.1. A license is not required for establishment, expansion and modernization of industrial enterprises except those related with defence, public health and environment as mentioned in Annex 2. Decision to grant the license or not will be made within 30 days upon receipt of the application for the license. The cottage industries should be registered within 6 months after it comes into operation, but for other industries registration is compulsory before coming into operation. No feasibility study is required for the industries for registration. The applicants will be informed about the registration within 21 days of his application.

5.2. Permission should be taken for foreign investment in industries.

6. Facilities

6.1. No income tax, sales tax, and excise duty shall be imposed on traditional cottage industries.

6.2. Income tax shall be exempted in the case of manufacturing industries (other than cigarette,

bidi, alcohol, vegetable ghee, plastics and electronic assembly industries), energy based industries, agro and forest based industries (other than saw mill and catechu industries) and mineral based industries for a period of five years from the date of its operation.

6.3. Income tax shall be exempted for a period of seven years from the date of operation in case of industries of national priority as listed in Annex 3.

6.4. No income tax shall be imposed on the export-earnings.

6.5. Industries are entitled to a reduction in tax rate on each income tax slab by 5 percentage points.

6.6. Industries (other than cigarette, bidi, and alcohol) established in the remote, undeveloped and underdeveloped districts listed in Annex 5 will be granted a rebate of 50 percent, 20 percent and 10 percent of income tax and 25 percent, 15 percent and 10 percent of excise tax respectively. If the classification of annexure is changed and in consequences of which the industry is

deprived of granted exemption, in such case the industry shall still be enjoying the exemption for a period of 5 years from the date of commencement of its operation.

- 6.7. Industries are entitled to add 33 percent to the rate of depreciation allowed under the income tax law.
Industries established as Public Limited Co. with a minimum of 15 percent of shares distributed to more than 100 persons and listed in the stock exchange are entitled to a 5 percent reduction in corporate tax.
- 6.9. In case of industry which diversifies itself through the reinvestment of expanded its installed capacity by 25 percent or more, or modernizes its technology or develop the ancillary industries, it may deduct 40 percent of new additional fixed assets from its taxable income. Such remission may be deducted in lump sum or in installments within a period of three years.
- 6.10. Permission will be granted for a reduction up to 50 percent from

the taxable income for the investment of an industry on equipment of process to minimise pollution.

- 6.11. An exemption of the income tax up to a period of 5 years shall be granted to the prescribed industries related to tourism, services and construction as notified in the Gazette by HMG on the basis of recommendation of Industrial Promotion Board.
- 6.12. Pre-operation cost covering the expenses of skill development shall be allowed to be capitalized.
- 6.13. 10 percent of the gross profit is allowed as a deduction against net income on account of expenses related with technology or product development and efficiency-improvement.
- 6.14. No income tax will be imposed on dividends received from investment on industries.
- 6.15. While assessing the net income, an amount of up to 5 percent of gross income shall be allowed to be deducted as expenses for items as donation to school,

colleges, university, religious places and social works.

- 6.16. Up to 5 percent of gross income spent for advertisement of the products or promotion services, for hospitality or any similar expenses shall allowed to be deducted while assessing the net income.
- 6.17. Manufacturing, energy based, agro based, forest based and mineral based industries (other than cigarette, bidi, alcohol, saw mill, catechu) which utilize 90 percent or more of the locally available raw materials for their production and not listed in Annex 3, shall be granted income tax exemption of additional 2 years.
- 6.18. A single industry providing one thousand or more direct employment shall be granted income tax exemption of additional two years.
- 6.19. In case an industry utilizes the locally available raw materials, chemicals and packing materials etc. on which excise duty, or sales tax or both are already imposed on, the excise duty,

sales tax or both will be refunded to the industry.

7: Infrastructural Services

- 7.1. Priority will be given to the industries in providing electricity, water and communication facilities.
- 7.2. Industries will be given priority for Government land and in Industrial Districts for the establishment on industries.

8. Special Facility for Export Oriented Industries

- 8.1. The custom duty, excise duty and the sale taxes imposed on raw materials and auxiliary raw materials of export oriented industry shall be reimbursed to the exporters on the basis of the quantity of the export within 60 days upon the receipt of the application for such reimbursement.
- 8.2. The industries exporting 90 percent or more of their products are entitled to enjoy the same facilities as has been provided to the industries

established in Export Processing Zone. The bonded warehouse facilities shall be continued.

8.3. In case an industry sells its product within the country in foreign currency, the excise duty and sales taxes imposed on the quantity so sold and the custom duty, excise duty and the sale taxes imposed on raw materials used in such products shall be reimbursed to such industries within 60 days upon the receipt of the application for such reimbursement.

8.4. The custom duty, excise duty and sale taxes imposed on the production of intermediate goods used in the production of exportable goods shall be reimbursed to the exporter on the basis of the quantity of export within 60 days upon the receipt of the application for such reimbursement.

9. Other Facilities

9.1. In the case of goods which may be brought into Nepal at artificially lowered prices, import duties will be imposed so as to ensure that the level of

protection granted to local industries is maintained.

9.2. No industry shall be nationalized.

9.3. A rehabilitation programme for sick industries will be launched after conducting feasibility studies for the rehabilitation of such industries.

9.4. Arrangements will be made to avail the forests on lease or contract basis to forest products based industries.

10. Availability of facilities

10.1. The license or letter of registration will specify the facilities to be granted to the industries, the responsibilities of the industrialists and the terms and conditions to be observed by them. A separate committee will be constituted with a representative of the private sector to resolve any problem faced by industrialists due to non-availability of facilities so mentioned. If an entrepreneur fails to comply with the condition to be observed by them, HMG can at any time

cancel the license or registration. The concerned industrialist will be given adequate opportunity to present his case before cancelling such license or registration.

- 10.2 Enterprises will continue to enjoy incentives and facilities entitled to them by the act legislated under this policy for the period specified by the same act, without let or hindrance, notwithstanding the amendments in this policy regarding classifications or facilities or incentives.

11. Industrial Support Service

11.1. Industrial Promotion Board:- A high level Industrial Promotion Board as per Annex 4 shall be constituted to accelerate the pace of industrialization by coordinating the policies among the policy level institutions as well as at the level of implementation.

- 11.2. Institutional Arrangement for Cottage and Small industries - An institutional arrangement shall be made to provide

facilities for the skill development training, management training, technical and consultancy services, machines and equipments, raw materials and marketing network for the products in an integrated way for the cottage and small scale industries which are based on local raw-materials, labour and the traditions.

- 11.3. Industrial District Management Company Limited- Industrial sheds and the lands owned by industrial estates shall be sold to the industrialists with the condition of using them to run industries. The management of the industrial estates shall be transferred to the industrialists within the estates. Industrial District Management Company Limited shall be made active in establishing new industrial estates with total or partial ownership of the private sector. HMG may provide additional facilities to the industries established within the industrial estates.

- 11.4. Arrangement for Finance for Small and Cottage Industries - A separate arrangement shall be made for providing loan for fixed and working capital for the small and cottage industries.
- 11.5. Institutional Arrangements for Technology Development and Transfer - A Technology Development and Transfer Agency shall be established in order to make the process of technology development and transfer more effective as well as to support the process of industrialization through proper import, development and management of the technology. It will disseminate the information and related statistics on technology and technology transfer to the industrialists free of charge.
- 11.6. Export Processing Zone - Export Processing Zone shall be established with a view to accelerate the pace of industrial development as well as to minimise the adverse effects on the balance of payments. No taxes shall be imposed on machine equipments, raw-

materials and the exportable products of the industries established in the Zone.

- 11.7. Industrial Manpower and Productivity Council - Industrial Manpower and Productivity council shall be set up with the representation of HMG, employees and private sector to make the industrial sector more efficient and productive by conducting the productivity enhancement and skilled and efficient manpower supply programme as a national campaign. The Economic Service Center shall be entrusted to carry out this productivity programme as a separate project until the new arrangement is made.
- 11.8. Special Arrangement for Environment and Industrial Pollution Control - A separate unit will be established in the Ministry of Industry to formulate Policies, guidelines and standards to check and minimise the adverse effects of pollution due to industrial

growth. Arrangements shall be made in the Department of Industry, manning it with qualified and skilled manpower, to conduct environmental impact assessment during the period of licensing itself. The Bureau of Nepal Standard and Metrology will be strengthened to develop standards to assess and monitor industrial pollution.

11.9 Monitoring and Follow up Unit

- A Monitoring and Follow up unit shall be set up in The Ministry of Industry with the participation of private sector to investigate and monitor the implementation of industrial policy and related acts and regulations. This unit shall also monitor and manage the possible monopoly tendency that could arise in the industrial sector.

11.10 Establishment of Company

Registrar Office - A company registrar office shall be set up for the administration and registration of company related with industrial and commercial sectors as well as for the

management of issues of shares, bonds, and debentures of the public limited companies.

11.11 Arrangements for One window

Services - To provide the facilities mentioned in the policy without any difficulties a high level committee comprising the heads of related departments shall be set up under the industrial Promotion Board.

Annex -1

TRADITIONAL COTTAGE
INDUSTRIES

Handloom, Paddle Loom, Semi Automatic Loom, Warping, Dyeing and Printing Works, Tailoring, Knitting, Hand Knitted Woollen Mat and Blanket (Radi Pakhi), Hand Knitted Woollen Carpet, Pashmina, Woolen Garments, Carpentry, Wooden Artistic Products, Cane And Bamboo Works, Natural Fibers Products, Hand Made paper, Gold, Silver, Brass, Copper Works and Ornaments, Sculptures, Precious and Semiprecious Stones, Honey, Chyuri, Cardamon, Processing, Pottery, Leather Cutting and Tanning, Rural Tanning Cobblers, Jute, Sabai Grass, Choya, Cotton Thread, Leather Goods, Artistic Products made up of Bones and Horns, Stone Carving, Metal Based on Precious and Semiprecious Stones, Fine Arts, Paw, Boutique, Goods Based on Hand Made Paper, Incense Stick (Dhup), Dolls and Toys, Stone Studded Philgiree Products.

Note :-

1. Unless otherwise specified each individual machine of the above mentioned industries should not

employ through electric motors or diesel or petrol of crude oil engine more than one horse power.

2. License is required for establishment of mechanised spinning and mechanised carpet manufacturing.

DEFENCE RELATED INDUSTRIES

Industries producing traditional and modern arms and ammunition, gunpowder and explosives, security printing, currency and coins.

Industries Affecting Public Health and Environment

Cigarette, Bidi, Modern Leather Tanning, Beer and Alcohol, Sugar production, Pulp and paper, Cement, Textile Washing and Dyeing, Bitumen, Chemicals¹, Fertilizer, Pesticides, Lubricating Oil Producing Industries, Foam, Carpet Washing and Dyeing, Soap, Electro-Plating, Photo Processing, Tyre Tubes, L.P.G., Petrol and Petroleum Products², Mineral Based Large Industries, Hydro Electricity Generating Plant, Stone Crushing, Forest Based Medium and Large Scale Industry, Paints, Brick Making.

¹ Industries producing chemicals as sulphuric acid, nitric Acid, methyl iso cyanate, sodium silicate, caustic soda etc are classified as chemical industries.

² Processing industries utilising Petrol Diesel, Fuel Oil, Natural gas, Naphtha etc as raw-materials are classified as petroleum and Petroleum Product Industries.

INDUSTRIES COMING UNDER NATIONAL PRIORITY

1. Modern Sugar and Khandasari Mills
2. Modern Mills Processing Local Oilseeds
3. Integrated Dairy (Including Animal Husbandry) Industry
4. Fruit and Vegetable Seed Production
5. Tea and Coffee Farming and Processing
6. Fruit Processing
7. Herbs Farming and Processing
8. Baby Food and Hygienic Food Industry
9. Leather Processing and Leather Goods Producing Industries
10. Commercial and Professional Tools and Implements Industries
11. Slate, Stone and Concrete Block Industry
12. Cotton, Woollen, Silk yarn and Industries Based on Them
13. Paper industries-Writing, Printing and News print Paper
14. Education Materials and Stationeries Industries
15. Pharmaceutical
16. Medical Equipments and Tools Producing Industry
17. Engineering Industry (Including Agricultural and Industrial Tools and Equipments)

18. Insecticides and Pesticides Industry
19. Chemical Fertilizer (Excluding Blending and Mixing) Industry
20. Industry Manufacturing Energy and Fuel Saving Devices
21. Industry Manufacturing Pollution Control Devices.
22. Industry Based on Waste Products
23. Hydropower Generation and Distribution
24. Hotel, Resort
25. Road, Bridge Tunnel, Rope Way, Flying Bridge Railway, Trolley Bus and Office and Residential Complex (Excluding Real Estate Business)
26. Mineral Based Industry
27. Industry Utilizing Hydroelectricity as Main Component as Caustic Soda, Chlorine and Aluminium Smelter etc.
28. Hospital, Nursing Home.
29. Computer Software
30. Export Oriented Agro-based Industry
31. Precision Goods.

COMPOSITION OF INDUSTRIAL
PROMOTION BOARD

1. Honourable Minister / State Minister for Industry chairman
2. Honourable Assistant Minister for Industry Member
3. Honourable Member (Industry), National Planning Commission "
4. Governor, Nepal Rastra Bank "
5. Secretary, Ministry of Industry "
6. Secretary, Ministry of Finance "
7. Secretary, Ministry of Commerce "
8. Secretary, Ministry of Tourism "
9. Representative, Federation of Nepal Chambers of Commerce and Industries "
10. Two Reputed Personalities From Industry, Commerce and Tourism Sector "
11. Director-General, Department of Industry Member Secretary

The Board May Invite Others if it Feels Necessary.

THE FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER ACT, 1992

AN ACT MADE TO PROVIDE FOR MATTERS RELATING TO FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER

Preamble : Whereas, in the process of industrialization of the country, it is expedient to promote foreign investment and technology transfer for making the economy viable, dynamic and competitive through the maximum mobilization of the limited capital, human and the other natural resources,

Be it enacted by Parliament in the twenty first years of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

1. Short Title and Commencement:

- (1) This Act may be called "THE FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER ACT, 1992".
- (2) It shall come into force at once.

2. Definitions:

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

- (a) "Industry" means any industry as referred to in Section 3 of the Industrial Enterprises Act, 1992.
- (b) "Foreign Investment" means the following investment made by a foreign investor in any industry:

- (1) Investment in share, (Equity)
- (2) Reinvestment of the earnings derived from the investment as referred to in sub-section (1) above,
- (3) Investment made in the form of loan or loan facilities.

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

- (1) Use of any technological right, specialization, formula, process, patent or technical know-how of foreign origin.
- (2) Use of any trademark of foreign ownership.
- (3) Acquiring any foreign technical, consultancy, management and marketing service.

(d) "Foreign Investor" means any foreign individual, firm, company or corporate body involved in foreign investment or technology transfer including foreign government or international agency.

(e) "Board" means the industrial promotion Board Constituted under Section 12 of the Industrial Enterprises Act, 1992.

(f) "Department" means the Department of Industries or Department of Cottage and Small Industries of His Majesty's Government or any other department, office or agency as specified by His Majesty's Government.

(g) "Prescribed" or "As prescribed" means prescribed or as prescribed in rules made under this Act or in an order issued by His Majesty's Government by notification published in the Nepal Gazette.

3. Permission to be obtained:

- (1) Permission of the Department shall be required to be obtained for foreign investment or technology transfer.

(2)

(2) A person desiring to avail the foreign investment or technology transfer shall be required to make an application to the Department in the prescribed form alongwith the prescribed particulars for obtaining permission in that behalf.

(3) If an application is made pursuant to sub-section (2) above, the Department shall, in accordance with the decision of the Board, grant permission within thirty days from the date of application. The Department shall communicate the decision so made by the Board to the applicant.

(4) Notwithstanding anything contained in sub-sections (1) and (2) above, no permission shall be granted for making foreign investment in industries producing alcohol, cigarettes or bidi, other than those alcohol, cigarettes or bidi industries which export cent percent of its products, and in industries manufacturing arms and ammunitions.

4. Technology to be Transferred:

(1) Only the transfer of technology may be allowed in the cottage and small industries and the medium industries with a fixed asset of up to twenty million rupees.

(2) Before entering into an agreement for the transfer of technology pursuant to sub-section (1) above, it shall be necessary to obtain the permission of the Department in accordance with Section 3.

5. Facilities and Concessions:

(1) A Foreign Investor shall be levied tax at a rate of only 15 percent on the income received from the interest on foreign loan, royalty, technical and management service fees.

(2) A Foreign Investor making investment in foreign currency shall be entitled to repatriate the following amount outside the Kingdom of Nepal:-

(a) The amount received by the sale of the share of foreign investment as a whole or any part thereof,

(3)

- (b) the amount received as profit or dividend in lieu of the foreign investment,
- (c) the amount received as the payment of the principal of and interest on, any foreign loan.
- (3) A Foreign Investor shall be entitled to repatriate outside the Kingdom of Nepal the amount received under an agreement for the transfer of technology in such currency as set forth in the concerned agreement.

6. Provisions Relating to Visa:

- (1) A foreign national visiting the Kingdom of Nepal in connection with undertaking any study or carrying out any research with the objective of making investment in the Kingdom of Nepal shall be provided a non-tourist visa for up to six months.
- (2) A Foreign Investor and/or his dependents or his authorized representative shall be, for the purpose of stay in the Kingdom of Nepal, provided a non-tourist visa:

Provided that a Foreign Investor, who at a time, makes convertible currency investment in an amount more than one million United States dollars and his dependents, shall be granted a residential visa until such investment is retained.

7. Settlement of Disputes:

- (1) If any dispute arises between a Foreign investor, national investor or the concerned industry, the concerned parties shall be required to settle the dispute by mutual consultations in the presence of the Department.
- (2) If the dispute could not be settled in the manner as referred to in sub-section (1) above, it shall be settled by arbitration in accordance with the prevailing Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

- (3) The Arbitration shall be held in Kathmandu. The laws of Nepal shall be applicable in arbitration.

8. Power to Frame Rules:

His Majesty's Government may frame necessary rules for carrying out the objectives of this Act.

9. This Act to Prevail :

Notwithstanding anything contained in the existing laws, matters stipulated under this Act and rules made thereunder shall be dealt accordingly.

10. Repeal and Savings :

- (1) The Foreign investment and Technology Act, 1981 is hereby repealed.
- (2) All acts performed or actions taken under the Foreign Investment and Technology Act, 1981 shall be deemed to have been performed or taken under this Act.

THE INDUSTRIAL ENTERPRISES ACT, 1992

AN ACT MADE TO PROVIDE FOR THE
INDUSTRIAL
DEVELOPMENT

Preamble : Whereas, for the overall economic development of the country, it is expedient to make arrangements for fostering industrial enterprises in a competitive manner through the increment in the productivity by making the environment of industrial investment more congenial, straightforward and encouraging,

Be it enacted by Parliament in the twenty first year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

1. Short Title and Commencement:

- (1) This Act may be called "THE INDUSTRIAL ENTERPRISES ACT, 1992".
- 2) It shall come into force at once.

2. Definitions:

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

- (a) "Industry" means any industry as referred to in Section 3.
- (b) "Cottage Industry" means any industry as referred to in Section 4.
- (c) "Small Industry" means any industry as referred to in Section 5.
- (d) "Medium Industry" means any industry as referred to in Section 6.

- (e) "Large Industry" means any industry as referred to in Section 7.
- (f) "Fixed Asset" means movable and immovable properties of any industry as referred to in Section 8.
- (g) "Board" means the Industrial Promotion Board constituted under Section 12.
- (h) "Committee" means the One-Window Committee constituted under Section 17.
- (i) "Operation Date" means the date from which the concerned industry either starts its commercial production or provides its service.
- (j) "Department" means the Department of Industries or the Department of Cottage and Small Industries or any other department or office as His Majesty's Government may, by notification published in the Nepal Gazette, specify.
- (k) "Prescribed" or "As prescribed" means prescribed or as prescribed in rules made under this Act or in an order issued by His Majesty's Government by notification published in the Nepal Gazette.

3. Classification of Industries :

For the purpose of this Act, industries are classified as follows:-

- (a) Manufacturing Industries : Industries which produce goods by utilising or processing raw materials, semi-processed materials, by-products or waste products or any other goods.
- (b) Energy-Based Industries : Industries generating energy from water resources, wind, solar, coal, natural oil, gas, bio-gas or any other sources.
- (c) Agro and Forest-Based Industries : Business mainly based on agriculture or forest products such as integrated sericulture and silk production, horticulture and fruit processing, animal husbandary, dairy industry, poultry farming, fishery, tea gardening and processing, coffee farming and processing,

- herbiculture and herb processing, vegetable seed farming, bee-keeping, honey production, rubber farming, floriculture and production, and forestry related businesses such as lease-hold forests, agro-forestry etc.
- (d) Mineral Industries : Mineral excavation or processing thereof.
- (e) Tourism Industries : Tourist lodging, motel, hotel, restaurant, resort, travel agency, skiing, gliding water rafting, cable car complex, pony-trekking, trekking, hot air ballooning, parasailing, golf-course, polo, horse riding etc.
- (f) Service Industries : Workshop, printing press, consultancy service, ginning and bailing business, cinematography, construction business, public transportation business, photography, hospital, nursing home, educational and training institution, laboratory, air services, cold storage etc.
- (g) Construction Industries : Road, bridge, ropeway, railway, trolley bus, tunnel, flying bridge and industrial, commercial and residential complex construction and operation.

4. Cottage Industries :

The traditional industries utilizing specific skill or local raw materials and resources, and labour intensive and related with national tradition, art and culture as mentioned in Annex I shall be named as cottage industries.

5. Small Industries :

Industries with a fixed asset of up to an amount of ten million rupees shall be named as small industries.

6. Medium Industries :

Industries with a fixed asset between ten and fifty million rupees shall be named as medium industries.

7. **Large Industries :**

Industries with a fixed asset of more than fifty million rupees shall be named as large industries.

8. **Fixed Assets of Industries :**

(1) The fixed asset of an industry shall consist of the following movable and immovable assets:-

- (a) Land and land improvement (works such as land levelling, filling and fencing),
- (b) Physical infrastructures (such as sewerage, internal road),
- (c) Office, factory building, godown, electric-distribution, water distribution system and residential buildings,
- (d) Machinery, equipment and tools,
- (e) Means of transportation,
- (f) Electrical equipment and office equipment,
- (g) Furniture, fixture communication system and equipment.

(2) In addition to the assets referred to in sub-section (1) above, expenses incurred or to be incurred in connection with technical consultancy and supervision prior to the making of investment in any industry or during different stages of construction, and which is to be capitalized, pre-investment and pre-operation costs as well as the amount of interest during the construction period, which is to be capitalized, shall be considered as the fixed assets of any industry.

9. **Permission :**

(1) Industries other than those as set forth in Annex 2 which may significantly cause adverse effect on the security, public

(4)

health and the environment, shall not be required to obtain permission for their establishment, extension and diversification.

(2) Whoever desires to establish an industry for which a license is required to be obtained by virtue of sub-section (1) shall, for obtaining permission, be required to make an application to the Department in the prescribed form alongwith the prescribed particulars.

(3) If an application is made pursuant to sub-section (2) above, the Department shall, as per the decision of the Board, grant permission in the prescribed format within thirty days from the date of application. If the Board decides not to grant permission for the establishment of the industry, the Department shall inform the applicant of such decision.

10. **Industry to be Registered :**

(1) In establishing any industry whether or not permission to that effect is required pursuant to this Act, registration in the Department as prescribed shall be required to be made.

(2) Notwithstanding anything contained in sub-section (1) above, a Cottage Industry shall be required to get registered within 6 months from the date of operation.

(3) The Department shall, within twenty one days from the date of application for registration pursuant to sub-sections (1) and (2) above, register such industry and issue an industry registration certificate to the applicant as prescribed.

(4) The registration of a Cottage and small Industry shall be made in the Department of Cottage and Small Industries or any district-level office under the Department or any office designated by the Department on its behalf and the registration of a Medium and Large Industry shall be made in the Department of Industries or at such office as may be designated by the Department.

(5)

11. Matters to be Contained in a License or Registration Certificate :

A License or Registration Certificate shall clearly contain matters relating to the facilities and concessions to be enjoyed by the industry and the prescribed terms and conditions to be observed by the industry.

12. Constitution of Industrial Promotion Board :

(1) His Majesty's Government shall constitute an Industrial Promotion Board consisting of the following members:-

- (a) The Minister or State Minister for Industries - Chairman
- (b) The Assistant Minister for Industries - Member
- (c) Member, (looking after industries) National Planning Commission - Member
- (d) The Governor, Nepal Rastra Bank - Member
- (e) The Secretary, Ministry of Industry - Member
- (f) The Secretary, Ministry of Commerce - Member
- (g) The Secretary, Ministry of Finance - Member
- (h) The Secretary, Ministry of Tourism - Member
- (i) The Director General, Department of Cottage and Small Industries - Member
- (j) Representative, Federation of Nepal Chambers of Commerce and Industries - Member
- (k) Two persons nominated by His Majesty's Government, either from among the Industry, Commerce and

tourism sector organizations or from among the persons of high distinction in the same field - Member

(l) The Director-General, Department of Industries Secretary - Member-

- (2) His Majesty's Government may, by notification published in the Nepal Gazette, make necessary alteration or change in the membership of the Board.
- (3) The Board may, if it deems necessary, invite any national or foreign expert or consultant at any meeting of the Board to participate therein as an observer.
- (4) The procedures relating to the meetings of the Board shall be as determined by the Board.

13. Functions, Duties and Powers of the Board :

The Functions, duties and powers of the Board shall be as follows:-

- (a) To render necessary cooperation in formulating and implementing policies, laws and regulations pertaining to the industrialization of the country.
- (b) To give guidelines in attaining the objectives of liberal, open and competitive economic policies pursued by the country so as to make the industrial sector competitive.
- (c) To maintain coordination between the policy level and the implementation level of the industrial policy.
- (d) To cause to follow the ways and means for the prevention of the environmental pollution by putting more emphasis on the avoidance of effects on the environment and the public health.

- (c) To make recommendation to His Majesty's Government for the inclusion of any industry in the classification of industries.
- (f) To make recommendation to His Majesty's Government to introduce changes in the Areas mentioned in Annex 3 by making evaluation thereof from time to time.
- (g) To give directives to the concerned body after making enquiries into the application submitted by any industry complaining that the industry has not received the facilities and concessions to be made available by the Committee.
- (h) Other functions, duties and powers of the Board shall be as prescribed.

14. Change in the classification and Areas :

His Majesty's Government may, on the recommendation of the Board and by notification published in the Nepal Gazette, include any industry in the classification of industries or make timely changes in the Areas mentioned in Annex 3.

15. Facilities and concessions to be accorded to Industries :

Notwithstanding anything contained in the laws relating to income tax, sales tax, excise duty and customs duties and in any other existing laws, an industry shall be entitled to receive the following facilities and concessions:-

- (a) No cottage industry shall be levied sales tax, excise duty and income tax.
- (b) Manufacturing industries (except cigarettes, bidi, alcohol, beer, vegetable ghee, plastic and electronic assembly), energy-based, agro and forest-based (except sawmill and catechu) and mining industries shall be entitled to an income tax exemption for a period of five years from the date of commercial production by the industry.

- (c) The industries classified under national priority as mentioned in Annex 4 shall be entitled to an income tax exemption for an additional period of two years:

Provided that the agro and forest-based industries as mentioned in Annex 4 shall be entitled to a five-year income tax exemption.

- (d) Manufacturing, energy-based, agro and forest-based industries, other than cigarette, bidi, alcohol, saw-mill and catechu, utilizing 90 percent or more of the local raw materials for their production and which are not listed in Annex 4 shall be, upon the expiration of the five-year income tax exemption period to be made available pursuant to clause (b) above, shall be entitled to an income tax exemption for an additional period of two years.
 - (e) Industries shall be entitled to a reduction in tax rate on each income tax slab or corporate tax by 5 points.
- Example : If the rate of the income tax in the existing laws is 10, 15 and 20 percent, industries shall be taxed at the rate of 5, 10 and 15 respectively, and if the rate of the corporate tax is 40 percent, industries shall be tax at the rate of 35 percent.
- (f) Industries, other than cigarette, bidi, alcohol and beer, established in the Remote, Undeveloped, Underdeveloped and relatively Developed Areas as mentioned in Annex 3 will be granted a rebate of 60, 50, 20 and 10 percent of the income tax, and 35, 25, 15 and 10 percent of excise duty respectively. If the annex of the classification of Areas is changed and as a consequence of which the industry is deprived of granted exemption, the industry shall be entied to such exemption up to a period of five years from the date of such change.
 - (g) Fruit-based fruit processing and cider and wine industries with a fixed asset of up to two million five hundred thousand rupees established in Mugu, Humla, Jumla, Dolpa, Kalikot, Bajura, Darchula, Bajhang, Achham, Mustang, Manang, Solukhumbu, Sankhuwasabha and Teplejung Districts shall

- be entitled to an excise duty and sales tax exemption for a period of ten years, and fruit-based alcohol industries shall be intitled to excise duty and sales tax exemption for a period of five years. On completion of such exemption period, His Majesty's Government may grant excise duty and sales tax exemption to the fruit-based alcohol industries for up to an additional period of three years.
- (h) While calculating depreciation on the fixed assets, industries shall be entitled to add one-third to the rate of depreciation allowed under the existing income tax laws.
 - (i) Industries established as a Public Limited Company with a minimum of 15 percent of shares distributed to more than 100 persons and listed in the stock exchange shall be entitled to a reduction of additional 5 points at the rate of the corporate tax to be levied under clause (e).
 - (j) If an industry diversifies itself through reinvestment in the same or any other industry, or expands its installed capacity by 25 percent or more, modernizes its technology or develops ancillary industries, it shall be intitled to a deduction of 40 percent of new additional fixed assets from its taxable income. Such remission may be deducted on a lump sum or on an instalment basis within a period of three years.
 - (k) Permission shall be granted for a reduction of up to 50 percent from the taxable income for the investment of an industry on process or equipment, which has the objective of controlling pollution or which may have a minimum effect on the environment. Such remission may be deducted on a lump sum or on an instalment basis within a period of three years.
 - (l) Pre-operation costs incurred by any industry in connection with skill development training shall be allowed to be capitalized.
 - (m) His Majesty's Government may, on the recommendation of the Board and by notification published in the Nepal Gazette, grant to the prescribed tourism, service and construction industries income tax exemption up to a period of five years.

- (n) After an industry comes into operation, 10 percent of the gross profit shall be allowed as a deduction against taxable income on account of expenses related with technology, product development and efficiency improvement.
- (o) No income tax shall be imposed on dividends earned out of the investment made in any industry.
- (p) An industry donating an amount of up to 5 percent of its gross income to any school, college, university, hospital, religious place and in social activities shall be entitled to a deduction of such donated amount in course of assessing the taxable income.
- (q) Up to 5 percent of gross income spent for the advertisement of the products or promotion services, hospitality and any other similar expenses shall be allowed to be deducted while assessing the taxable income.
- (r) If a single industry provides direct employment to six hundred or more people, it shall be, in addition to the income tax exemption under clauses (b) and(c), granted income tax exemption for an additional period of two years.
- (s) If any other industry utilizes locally available raw materials, chemicals and packing materials etc. on which excise duty or sales tax or both are already imposed, the excise duty, sales tax or both shall be reimbursed to the industry utilizing such raw materials, chemicals and packing materials. The amount to be so reimbursed shall be refunded within sixty days after an application to that effect has been duly submitted.
- (t) No income tax shall be levied on the profits earned through export.
- (u) The customs duty, sales tax, excise duty and premium levied on raw materials and auxiliary raw materials etc. utilized by any industry in connection with its product during its production shall be reimbursed on the basis of the quantity of the export. Such reimbursement shall be made to the

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| (b) The Director-General, Department of Customs | - | Member |
| (c) The Director-General, Department of Excise Duty | - | Member |
| (d) The Director-General, Tax Department | - | Member |
| (e) The Director-General, Sales Tax Department | - | Member |
| (f) The Director-General, Department of Commerce | - | Member |
| (g) The Chief Controller, Nepal Rastra Bank | - | Member |
| (h) Representative, Federation of Nepal Chambers of Commerce and Industries | - | Member |
| (i) One expert in the field of industry and commerce as designated by His Majesty's Government or one representative from the Federation | - | Member |
- (2) His Majesty's Government may, by notification published in the Nepal Gazettee, make alterations or changes in the members of the committee.
- (3) The Committee may if it deems necessary, invite any national or foreign expert or consultant to participate in the meetings of the Committee as an observer.
- (4) The procedures relating to the meeting of the Committee shall be as determined by the Committee.

18. Functions, Duties and Power of the Committee :

- (1) The functions, duties and powers of the Committee shall be as follows:-
- To make necessary decisions for making available the facilities and concessions to be enjoyed by any industry under this Act.
 - To perform such functions as may be delegated by the Board under its functions, duties and powers,
 - Other functions, duties and powers of the Committee shall be as prescribed.
- (2) Any decision made by the Committee in pursuance with clause (a) of sub-section (1) above, shall be required to be implemented by the concerned body.

19. Prohibition on the Misuse of Facilities and Concessions :

No misuse of the facilities and concessions to be enjoyed by any industry under this Act shall be allowed.

20. Guarantee of Facilities :

- An industry which is operated by obtaining permission or by getting registered under the Industrial Enterprises Act, 1981 shall continue to enjoy the timebound facilities and concessions under the Act and with regard to the facilities and concessions for which no time has been fixed, it shall enjoy the facilities and concessions under this Act.
- An industry which has been registered or has obtained permission before the commencement of this Act but which has started its commercial production only after the commencement of this Act shall enjoy the facilities under this Act.

Provided that if the timebound facilities and concessions to be enjoyed under the Industrial Enterprises Act prevailing at the time of registration or obtaining

permission by such industry are for more than the period as granted by this Act or if the facilities and concessions are not to be made available under this Act, nothing shall prevent from enjoying the facilities and concessions under the prevailing Industrials Enterprises Act.

21. Industries not to be Nationalised :

No industry shall be nationalised.

22. Industrial Manpower :

(1) The manpower required for any industry shall have to be recruited from among Nepali citizens.

(2) Notwithstanding anything contained in sub-section (1) above, if any industry can not be operated without person living outside his own country expatriate manpower, foreign nationals may be appointed in such industry with the prior approval of the Department of Labour for a maximum period of five years. If a person so appointed happens to be a technician of a special category but not available within Nepal, such person may, with the approval of the Department of Labour, be appointed for up to an additional period of five years.

(3) A foreign national who is working in any industry pursuant to sub-section (2) above and who is from a country wherein convertible foreign currency is in circulation, may repatriate his salaries, allowances, emoluments etc in convertible foreign currency in an amount not exceeding seventy five percent of such salaries, allowances and emoluments.

23. Duty to furnish Particulars :

It shall be the duty of the concerned industry to furnish the industry related particulars as prescribed to the concerned department on a regular basis.

24. Duty to inform in case of Closing Down of Industry :

If an industry is closed down after fulfilling the formalities as envisaged in the existing laws, information thereof shall have to be provided to the concerned department within seven days from the date of closing down.

25. Power of His Majesty's Government :

(1) His Majesty's Government shall take any of the following actions against any person for establishing any industry without obtaining permission required to be obtained under this Act or for non-compliance with the terms and conditions set forth in the license or certificate of registration or for violating any other provision of this Act:

(a) To impose a fine in an amount not exceeding one hundred thousand rupees,

(b) To cancel the registration or permission of the industry,

(c) To cause to close down the industry.

(2) Before taking any action under sub-section (1), the concern industry shall be given a reasonable time either to submit the explanation or to correct the mistake.

(3) If any industry is not satisfied with the decision made by His Majesty's Government under sub-section (1) above, it may file an appeal to an Appellate Court within thirty five days of the notification thereof.

26. Delegation of Power :

(1) The Board may delegate any or all of its powers conferred upon it by this Act or rules made thereunder to the concerned department, office, official, committee, any member of the Board or any other committees or sub-committees constituted by the Board as necessary.

- (2) The Department may delegate any or all of its powers conferred upon it by this Act or rules made thereunder to any other department, office or official as necessary.

27. Power to frame Rules :

His Majesty's Government may frame necessary rules to carry out the objectives of this Act.

28. Power to remove Difficulties :

If any difficulty arises in connection with the implementation of this Act, His Majesty's Government may issue orders to remove such difficulty by notification published in the Nepal Gazette.

29. This Act to Prevail : Notwithstanding anything contained in the existing laws, the matters stipulated in this Act and rules made thereunder shall be dealt with accordingly.

30. Repeal and Savings : (1) The Industrial Enterprises Act, 1981 is hereby repealed.

- (2) All acts performed or actions taken under the Industrial Enterprises Act, 1981 shall be deemed to have been performed or taken under this Act.

(Relating to Section 4)

Cottage Industries

Handloom, pedalloom, semi-automatic loom, Warping, Dyeing and Printing, Tailoring (other than readymade Garments), Knitting, Hand-Knitted Woollen Mat and Blanket (Radi, Pakhi), Woollen Carpet, Pashmina, Woollen Garments, Carpentry, Wooden Artistic Product, Cane and Bamboo Works, Natural Fiber Products, Hand Made paper and Goods made up thereof, Gold, Philgiree Products including Silver, Brass, Copper, Precious and semi-precious Stones, Ornaments, Sculptures and Pottery, Honey, Chyuri, Cardamom Processing, Clay or Ceramic Pottery, Leather Cutting and Tanning, Rural Tanning and Leather Goods Producing works, Jute, Sabai Grass, Babio, Choya, Cotton Thread Products, Artistic Products made up of Bones and Horns, Stone Carving, Ceramic Fine Arts, Pauwa, Boutique, Incense Stick (Dhup), Dolls and Toys Industries.

Note:-

1. Unless otherwise mentioned specifically, machines of the above mentioned industries should not employ through electric motors or diesel or petrol or crude oil engine more than a total of five Kilowatt. Power looms shall not be included under Cottage Industries.
2. Permission shall be required for the establishment of mechanised woollen spinning and mechanised woollen carpet manufacturing.

(Relating to Rule 9)

Industries Requiring PermissionDefence Related Industries :

Industries producing Conventional and Modern Arms and Ammunitions, Gunpowder and Explosives, Security Printing, Bank notes and Coins.

Industries Affecting Public Health and the Environment :

Cigarette, Bidi, Modern Leather Tanning, Beer and Alcohol Industries; Sugar Production, Pulp and Paper, Cement, Textile Washing and Dyeing, Bitumen, Chemicals 1, Fertilizer, Pesticides, Lubricating Oil Producing Industries, Foam, Carpet Washing, Soap, Electro-plating, Photo Processing, Tyre, Tubes, L.P. Gas, Petroleum Products Related Industry², Mineral-based Large Industries, Stone Crushing, Forest-based Medium and Large Industries, Paints and Brick Industries.

Note:-

1. Chemical Industry means any industry producing chemicals such as sulphuric acid, nitric acid, methy iso cynate, sodium silicate, caustic soda etc.
2. Petroleum Products Related Industry means any industry producing goods by processing and utilizing raw materials such as petrol, diesel, fuel oil, natural gas, naptha, plastic granual.

(Relating to Clause (f) of Section 13)

Classification of AreasRemote Areas

- | | |
|-----------------|-------------------|
| 1. Darchula | 2. Bajhang |
| 3. Bajura | 4. Humla |
| 5. Jumla | 6. Mugu |
| 7. Kalikot | 8. Dolpa |
| 9. Mustang | 10. Manang |
| 11. Solukhumbu | 12. Sankhuwasabha |
| 13. Khotang | 14. Bhojpur |
| 15. Achham | 16. Dailekh |
| 17. Jajarkot | 18. Rukum |
| 19. Okhaldhunga | 20. Myagdi |
| 21. Tehrathum | 22. Ramechhap |

Undeveloped Areas

- | | |
|---------------|------------|
| 1. Taplejung | 2. Rolpa |
| 3. Baitadi | 4. Rasuwa |
| 5. Gulmi | 6. Parbat |
| 7. Dadeldhura | 8. Pyuthan |
| 9. Doti | 10. Salyan |

11. Panchthar
13. Sindupalchowk

12. Baglung

Annex - 4

Underdeveloped Areas

- | | |
|----------------|---------------------|
| 1. Kailali | 2. Surkhet |
| 3. Arghakhachi | 4. Palpa |
| 5. Syangja | 6. Dhading |
| 7. Lamjung | 8. Tanahu |
| 9. Gorkha | 10. Sindhuli |
| 11. Udayapur | 12. Dhankuta |
| 13. Ilam | 14. Kanchanpur |
| 15. Bardia | 16. Dang |
| 17. Nuwakot | 18. Kavrepalanchowk |
| 19. Dolakha | |

Relatively Developed Areas

- | | |
|----------------|---------------|
| 1. Jhapa | 2. Siraha |
| 3. Sarlahi | 4. Mahottari |
| 5. Rautahat | 6. Saptari |
| 7. Nawalparasi | 8. Kapilbastu |
| 9. Kaski | |

(Relating to Clauses (b) and (c) of Section 15)

National Priority Industries

1. Modern Sugar and Khandsari Mills.
2. Modern Oil mills Processing Local Oilseeds.
3. Integrated Dairy (Including Animal Husbandry) Industry.
4. Fruit and Vegetable Seed Production Industry.
5. Tea and Coffee Farming and Processing Industry.
6. Fruit Processing Industry.
7. Herbs farming and Processing Industry.
8. Baby Food and Hygienic Food Producing Industry.
9. Cotton, Woollen and Silk Yarn Industry and Textile Industry based thereon.
10. Leather Processing and Leather Goods Producing Industry.
11. Commercial and Professional Tools and equipment Industry.
12. Slate Stone and Concrete Blocks Producing Industry.
13. Paper Industry (Writing, printing and News print).
14. Education Materials and Stationeries Industry.
15. Pharmaceutical Industry.
16. Medical Equipment and Tools Industry.
17. Engineering Industry (Including Agricultural and Industrial Tools and Equipment Producing).
18. Pesticides Industry.

19. Chemical Fertilizer (Excluding Blending and Mixing) Producing Industry.
20. Industry Manufacturing Fuel Saving Devices.
21. Industry Manufacturing Pollution Control Devices.
22. Solid Waste or Waste Product Processing Industry.
23. Hydropower Generation and Distribution.
24. Hotel, Resort.
25. Road, Bridge, Tunnel, Ropeway, Flying Bridge, Railway, Trolley Bus, and Office and Residential Complex etc.
26. Mineral-Based Industry.
27. Caustic Soda, Chlorin, Aluminium Smelter etc. Industry which utilizes electricity as its main Component.
28. Hospital, Nursing Home.
29. Computer Software Industry.
30. Export-Oriented Agro-Based Industry
31. Precision Goods.

LIST OF INDUSTRIES REQUIRING PERMISSION

(Annex - 2 of Industrial Enterprises Act)

Defence Related Industries

Industries producing Conventional and Modern Arms and Ammunition, Gunpowder and Explosives, Security Printing, Bank Notes and Coins.

Industries Affecting Public Health and Environment

Cigarette, Bidi, Modern Leather Tanning, Beer and Alcohol Industries, Sugar production, Pulp and Paper, Cement, Textile Washing and Dyeing, Bitumen, Chemicals¹, Fertilizer, Pesticides, Lubricating Oil Producing Industries, Foam, Carpet Washing, Soap, Electroplating, Photo processing, Tyre Tubes, L.P.Gas, Petroleum Products related Industry², Mineral Based Large Industries, Stone Crushing, Forest Based Medium and Large Industries, Paints, and Brick Industries.

¹ Chemical Industry means any industry producing chemicals such as sulphuric acid, nitric acid, methyl iso cyanate, sodium silicate, caustic soda etc.

² Petroleum products related industry means any industry producing goods by processing and utilizing raw materials such as petrol, diesel, fuel oil, natural gas, naphtha, plastic granuals.

28. Hospital, Nursing Home.
29. Computer Software Industry.
30. Export Oriented Agro-based Industry.
31. Precision Goods.

LIST OF NATIONAL PRIORITY INDUSTRIES

(Annex - 4 of Industrial Enterprises Act)

1. Modern Sugar and Khandsari Mills.
2. Modern Oil Mills Processing Local Oil-seeds.
3. Integrated Dairy (Including Animal Husbandry) Industry.
4. Fruit and Vegetable Seed Production Industry.
5. Tea and Coffee Farming and Processing Industry.
6. Fruit Processing Industry.
7. Herbs Farming and Processing Industry.
8. Baby Food and Hygienic Food Producing Industry.
9. Cotton, Woollen and Silk Yarn Industry and Textile Industry based thereon.
10. Leather processing and Leather Goods Producing Industry.
11. Commercial and professional Tools and Equipment Industry.
12. Slate, Stone and Concrete Blocks Industry.
13. Paper Industries (Writing, Printing and News Print).
14. Education Materials and Stationeries Industry.
15. Pharmaceutical Industry.
16. Medical Equipment and Tools Industry.
17. Engineering Industry (Including Agricultural and Industrial Tools and Equipment Producing).
18. Pesticides Industry.
19. Chemical Fertilizer (Excluding Blending and Mixing) Producing Industry.
20. Industry Manufacturing Fuel Saving Devices.
21. Industry Manufacturing Pollution Control Devices.
22. Solid Waste or Waste Product Processing Industry.
23. Hydropower Generation and Distribution.
24. Hotels, Resort.
25. Road, Bridge, Tunnel, Ropeway, Flying Bridge, Railway, Trolley Bus and Office and Residential Complex etc.
26. Mineral Based Industry.
27. Caustic Soda, Chlorine, Aluminum Smelter etc. Industry which Utilizes Electricity as its main component.

LIST OF INDUSTRIES REQUIRING IEE

1. All industries requiring license other than those listed in Appendix - 2.
2. All industries to be located in or near any of the following environmentally sensitive areas:
 - a. Areas of unique historic, cultural, archaeological, scientific, and geological interest.
 - b. Ecologically fragile areas.
 - c. National Parks, wildlife sanctuaries and protected areas.
 - d. Wilderness areas containing rare or endangered species of animals or plants and their habitat.
 - e. Semi-arid, alpine or tundra areas.
 - f. Flood or other hazard zones.
 - g. Residential, school and hospital areas.
 - h. Major sources of public water supply.
 - i. Wet lands.
 - j. Water bodies (static or flowing).

17. Establishment of industrial estates for medium and large scale industries covering an area of 50 ha or more.
18. Leather and Textile
 - a. Leather tanning with a capacity of over 100 pieces/day.
 - b. Textile industries with dyeing facilities having a capacity of more than 10 million meter/year.
 - c. Carpet manufacturing with capacity of over 500 sq.m./day.
19. Food Industry
 - a. Abattoirs including knackereries with capacity of 100 heads of animal/day.
 - b. Canning and bottling works having work space of 200 sq.m.
 - c. Brewery and distillery works which include boiling and fermentation with production capacity of over 25000 liters/day.
20. Coal Industry works of all sizes.
21. Hazardous waste industry of all sizes or any capacity of the following natures:
 - a. Construction of incineration plant,
 - b. Construction of recovery plant (off site),
 - c. Construction of secure land fill facility,
 - d. Construction of storage facility (off site), and
 - e. Construction of treatment facilities.

LIST OF INDUSTRIES REQUIRING EIA REPORT

1. Use of fertilizers, more than 100 tonnes.
2. Use of pesticides, more than 10 tonnes.
3. Construction of highways and feeder roads.
4. Multi-purpose Reservoir Development.
5. Electricity Generating Schemes of greater than 5 MW capacity.
6. Medium and Large Scale Irrigation Schemes.
7. Airport Construction.
8. Waste Management, Drainage and Disposal Systems serving more than 10,000 people.
9. Resettlement Programmes.
10. Water Supply Schemes serving more than 10,000 people.
11. Chemical Industries where production capacity of each product or combined product is greater than 100 t/day.
12. Petrochemical works including storage and processing works of all sizes.
13. Non-ferrous metal industries (primary smelting)
 - Aluminum -- all Sizes
 - Coppers -- all Sizes
 - Others -- producing 50 t/day or above.
14. Non-metallic industries
 - a. Cement - with production over 40 t/hour
 - b. Lime - with production over 100 t/day (Rotary Kiln) or 50 t/day and above (Vertical Kiln)
 - c. Brick and Tile Manufacture with production over 10 million/year.
 - d. Extraction of minerals and mining covering an area over 5 ha.
 - e. Extraction of aggregates or marbles or boulders with a capacity of over 100 cu.m/day.
 - f. Asbestos industries of all sizes.
 - g. Radio active relative industries of all sizes.
15. Iron and Steel
 - a. Iron ore as raw materials - having a production more than 100 t/day.
 - b. Scrap iron as raw materials - having a production more than 200 t/day.
16. Pulp and Paper
 - a. Wood based raw materials - having a production greater than 50 t/day.
 - b. Raw materials other than wood - having a production greater than 100 t/day.

TOTAL NUMBER OF APPROVED PROJECTS FOR FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER
(SINCE BEGINNING UP TO B.S. 2050, CHAITRA)

1994 March

| S.N. | Class of industries | EDR | CDR | WDR | MWDR | FWDR | Total | Total Authorized Capital Investment (Rs in Mln) | Projected Fixed Capital Investment (Rs. in Mln) |
|------|---------------------|-----|-----|-----|------|------|-------|---|---|
| 1. | Manufacturing | 10 | 120 | 13 | 4 | 1 | (148) | 12030 | 10053 |
| 2. | Energy Based | 1 | 7 | 3 | - | - | (11) | 6478 | 6045 |
| 3. | Agro Based | - | 2 | - | - | - | (2) | 13 | 10 |
| 4. | Mineral Based | - | 2 | - | - | - | (2) | 1150 | 1065 |
| 5. | Tourism | 2 | 35 | 6 | 1 | - | (44) | 5009 | 5027 |
| 6. | Service | 1 | 31 | 1 | - | - | (33) | 5019 | 3636 |
| | Total | 14 | 197 | 23 | 5 | 1 | 240 | 29699 | 25836 |

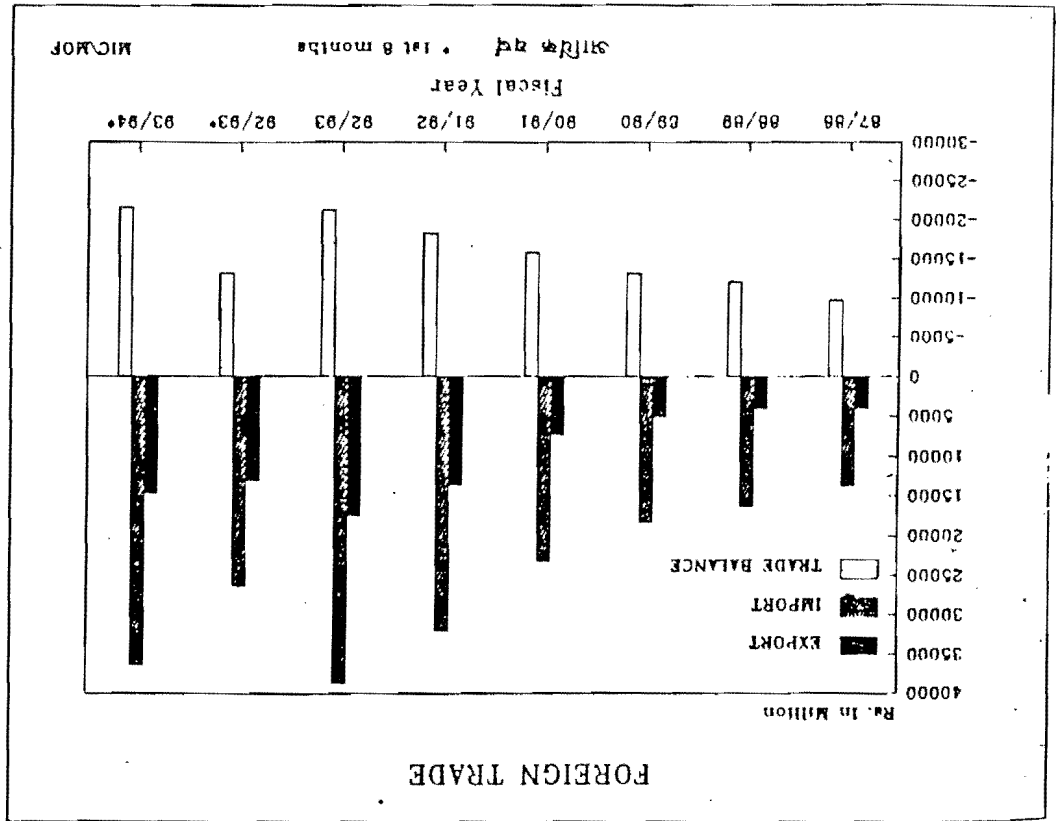
NOTE : OPERATING - 129 UNDER CONSTRUCTION - 28 CLOSED - 2 LICENSED ONLY - 80

APPROVED ONLY - 1

REGISTRATION OF TRADEMARK, PATENT & DESIGN

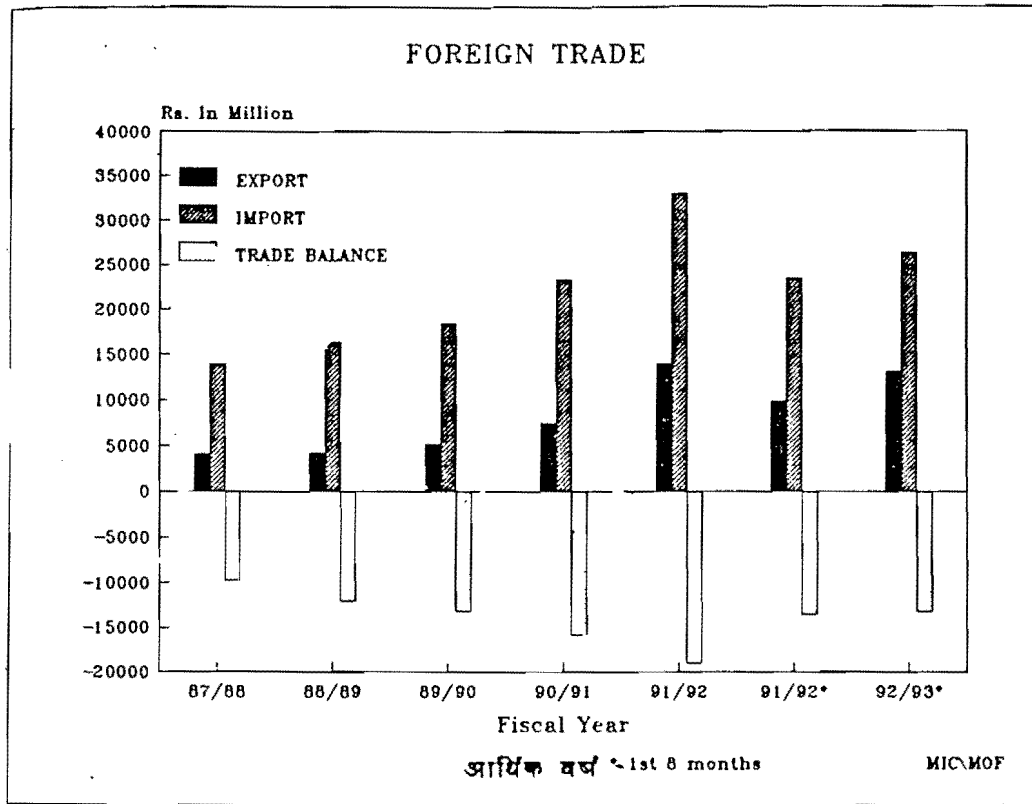
| Fiscal Year | Trademark | | | Patent | | | Design | | |
|--|-----------|---------|-------|----------|---------|-------|----------|---------|-------|
| | National | Foreign | Total | National | Foreign | Total | National | Foreign | Total |
| 2046/047 | 345 | 137 | 482 | -- | 4 | 4 | -- | -- | -- |
| 2047/048 | 407 | 174 | 581 | -- | 1 | 1 | -- | -- | -- |
| 2048/049 | 373 | 112 | 485 | 2 | 1 | 3 | -- | -- | -- |
| 2049/050 | 512 | 170 | 682 | -- | 4 | 4 | -- | -- | -- |
| TOTAL | 885 | 282 | 1167 | 2 | 10 | 12 | -- | -- | -- |
| 2049/050 FNM | 378 | 121 | 499 | -- | 3 | 3 | -- | -- | -- |
| 2050/051 FNM | 319 | 132 | 459 | -- | -- | -- | -- | 1 | 1 |
| Total Since B.S. 1994 to 2050/051 FNM (1993-94) | 6633 | 3160 | 9793 | 15 | 20 | 35 | 3 | 16 | 19 |

- Note:
- Out of total 9793 Trademarks registered, number of valid national Trademarks are 3736 Nos. and number of valid foreign Trademarks are 2215 Nos. as of B.S.2050 Chaitra.
 - Total number of valid Patent and Designs are 31 and 5 respectively.



₹. In Million

वैदेशिक व्यापार



List of Participating Countries in Joint Venture Collaboration Projects

| S.N. | Country | No. of Projects | Percentage |
|--------------|-------------|-----------------|------------|
| 01. | Australia | 1 | 0.40 |
| 02. | Austria | 3 | 1.22 |
| 03. | Bangladesh | 1 | 0.40 |
| 04. | Bermuda | 5 | 2.02 |
| 05. | Bhutan | 3 | 1.22 |
| 06. | Canada | 2 | 0.80 |
| 07. | China | 10 | 4.04 |
| 08. | Denmark | 3 | 1.22 |
| 09. | France | 8 | 3.23 |
| 10. | Germany | 12 | 4.85 |
| 11. | Hong Kong | 8 | 3.23 |
| 12. | India | 94 | 38.06 |
| 13. | Italy | 1 | 0.40 |
| 14. | Japan | 25 | 10.12 |
| 15. | Netherlands | 3 | 1.22 |
| 16. | Newzealand | 1 | 0.40 |
| 17. | Norway | 2 | 0.80 |
| 18. | Pakistan | 5 | 2.02 |
| 19. | Panama | 1 | 0.40 |
| 20. | Philippines | 2 | 0.80 |
| 21. | Russia | 1 | 0.40 |
| 22. | S. Korea | 13 | 5.26 |
| 23. | Singapore | 2 | 0.80 |
| 24. | Switzerland | 4 | 1.66 |
| 25. | Taiwan | 4 | 1.66 |
| 26. | Thailand | 4 | 1.66 |
| 27. | Ukrain | 1 | 0.40 |
| 28. | UK | 9 | 3.63 |
| 29. | USA | 19 | 7.68 |
| Total | | 247 | 100 |

*As of July 15, 1994

LIST OF FOREIGN COLLABORATION PROJECTS
(As of Mid July 1994)

| S.N. | Company Name | Product/Service | Foreign Collaborator | Country |
|------|---|---------------------------|--|-------------------------|
| 1 | Dynasty Aviation Pvt. Ltd. | Helicopter Service | Api Limited, Brisbane | Australia |
| 2 | Wiehart's Austrian Restaurant Pvt. Ltd. | Restaurant | Wiehart Herbert And His Mrs. | Austria |
| 3 | Gourmet Vienna Food Products | Sausages | Wiehart Herbert | Austria |
| 4 | Ashoka Carbon and Allied Inds. Pvt. Ltd. | Wax Carbon Paper | Kores Handels Gesseller Chait MBH | Austria |
| 5 | Thai Nepal Drinking Water Inds. Pvt. Ltd. | Drinking Water | Amnatchai Marnalerit | Thailand |
| 6 | National PVC Pipe Products Pvt. Ltd. | Pvc Pipe | Abul khair And Others | Bangladesh |
| 7 | Hulas Steel Pvt. Ltd. | CGI Sheet | Comcraft Asia Pvt. Ltd. | Bermuda |
| 8 | Himali Pipco Pvt. Ltd. | GI & Black Pipes | Charnley Development Company Ltd. | Bermuda |
| 9 | Arun Vanaspati Udhog Ltd. | Soyabean Oil, Veg. Ghee | Charnley Development Company Ltd. | Bermuda |
| 10 | Shree Ram Sugar Factory Ltd. | Sugar | Charnley Development Co. Ltd | Bermuda |
| 11 | Bhrikuti Pulp and Paper Industries | Paper, Paper Boxes | International Match Company Ltd. | Bermuda |
| 12 | Himalayan Height Resorts Pvt. Ltd. | Hotel | Panjor Ongdi | Bhutan |
| 13 | Rijal Tashi Industries Pvt. Ltd. | Fruits & Vegetables | Tashi Commercial Corporation | Bhutan |
| 14 | Tashi Nepal Company Pvt. Ltd. | Apartment | Dasho U. Dorji | Bhutan |
| 15 | Hotel Yak And Yeti | Hotel | Southern Pacific Hotel Opn. Ltd. | Bri. Virg Island |
| 16 | Devtech (Nepal) Pvt. Ltd. | Consultancy | N D Lee And Associates | Canada |
| 17 | Handloom Silk House Pvt. Ltd. | Silk Fabric | S N Mishra | Canada |
| 18 | Golden Battery Industry Pvt. Ltd. | Dry Cell Battery | China National Machinery I & E Corp. | China |
| 19 | Chinep Enterprises Pvt. Ltd. | Surgical Catguts & Casing | China Road And Bridge Engineering | China |
| 20 | Kool Bijuli Pankha Udhog | Electric Fan | China Sichuan Corp For Int. Techno Eco. Co-operation | China |
| 21 | Gorkha Brick Factory Pvt. Ltd. | Bricks | China National Building Material & Equipment I & E CORP | China |
| 22 | Nepal Power Engineering Co. Pvt. Ltd. | Transformer | Xian Electric Machinery | China |
| 23 | Maitri Pharma Laboratories Pvt. Ltd. | Medicine | Harbin No. 4 Pharmaceutical Factory | China |
| 24 | United Nursing Home Pvt. Ltd. | Nursing Home | China Sichuan Corporation | China |
| 25 | Gorakhkali Rubber Udhog Ltd | Tyres And Tubes | China National Chem. Const. Corp. | China |
| 26 | Mintoo Electronics Co. Pvt. Ltd. | T.V. & Decks | Mina Chhiring, Neg Sugyan & Dalra | China |
| 27 | Guan Zhou Deep Garment Industries | Readymade Garment | Guangzhou (China) Garment Ind. Ltd. | China, India |
| 28 | National Drilling Company | Drilling | International Water Contractors | Denmark |
| 29 | Gorkha Brewery Pvt. Ltd. | Beer | Limited Breweries, Danbrow | Denmark |
| 30 | Everest Milk Food Pvt. Ltd. | Milk Food | Lidarina A/S | Denmark |
| 31 | Modern Brick Nepal Pvt. Ltd. | Non Fired Brick | Michel Fayolle | France |
| 32 | Gokhra Ayurved Company Pvt. Ltd. | Ayurvedic Medicine | Centre For International Dev (CIDR) | France |
| 33 | Colas Nepal Pvt. Ltd. | Road Maintenance | Colas SA | France |
| 34 | Everest Mineral Water Pvt. Ltd. | Mineral Water | Spemobi SA | France |
| 35 | Vaicol Industries And Products Pvt. Ltd. | Bitumin Emulsion | Colas SA | France |
| 36 | Yeti Coach-Builders And Servicing Pvt. Ltd. | Bus Body Building | Michael Fayolle | France |
| 37 | International Manufacturing Co. Pvt. Ltd. | Wall Paper | Zuber & CIE | France |
| 38 | Hotel Jungle Camp | Hotel | Delterson Bertrand | France |
| 39 | Sports And Nature Pvt. Ltd. | Trekking | Nils Hallenberg | Germany |
| 40 | Nepal Colour Lab Pvt. Ltd. | Colour Photo | Dieter Koops | Germany |
| 41 | Indrani Cold Storage Pvt. Ltd. | Cold Storage | Hans Jokhim Siller | Germany |
| 42 | Integrated Livestock And H. Farming | Livestock | Horst Roeper | Germany |
| 43 | Nepal Bayern Electric Pvt. Ltd. | Transformers | Josef Wust Werkzeubbau | Germany |
| 44 | Royal Park Hotel And Restaurant | Hotel | Axel Rockburn | Germany |
| 45 | Wasteless Washing Pvt. Ltd. | Carpet Finishing | Karsten Dyke | Germany |
| 46 | Asian Business Consultant Pvt. Ltd. | Mgmt. Consultancy | Andreas Schumacher And Angie Schuma | Germany |
| 47 | Himalaya Plantation Pvt. Ltd. | Olive Plantation | Hartmut Bauder | Germany |
| 48 | Himalaya Washing Industry Pvt. Ltd. | Carpet Finishing | Volker Thiel | Germany, India |
| 49 | Sakura International Pvt. Ltd. | Hotel | Tuslomu Ako | Germany, Japan |
| 50 | Namobuddha Resort Centre Pvt. Ltd. | Hotel | Rudolf Holsher | Germany, USA, Neth. |
| 51 | Club Himalayan Pvt. Ltd. | Hotel | China Adventure Ltd | Hongkong |
| 52 | Nepal Recreation Centre Pvt. Ltd. | Entertainment | Connosa Investment Ltd. | Hongkong |
| 53 | Fago Yeti Electronics Pvt. Ltd. | Telephone Set | Fago Electronics Ltd. | Hongkong |
| 54 | Nimrod Pharmaceuticals (Nepal) Limited | Medicine | Safe Rich Industry Ltd. | Hongkong |
| 55 | Swastik Aerated Products Pvt. Ltd. | Soft Drinks | Pepsico Ink | Hongkong |
| 56 | Kantempo Wear Pvt. Ltd. | Jackets, Skeepants | Amblecote Limited | Hongkong |
| 57 | Nepal Entertainment Pvt. Ltd. | Entertainment | Continental Resort Pvt. Ltd. | Hongkong, USA, Thailand |
| 58 | Soaltee Hotel Ltd. | Hotel | Holidays Inns (Nepal) Ltd. | Hongkong |
| 59 | Sakura Restaurant Pvt. Ltd. | Restaurant | Upal K. Sen Gupta | India |
| 60 | Pradhan Engineering Company Pvt. Ltd. | Machinery | Indian Institute of Technology | India |
| 61 | Gurung Katha Udhog Pvt. Ltd. | Katha And Kutch | Kiran Mehta | India |
| 62 | Everest Ice-Cream Pvt. Ltd. | Ice Cream | Quality Ice Creams (India) Ltd | India |
| 63 | Asian Paints Nepal Pvt. Ltd. | Paints | Asian Pains (India) Ltd. | India |
| 64 | Dabur Nepal Pvt. Ltd. | Hair Oil, Tooth Powder | Dabur India Limited | India |
| 65 | Himalaya Feeds Pvt. Ltd. | Animal Feeds | Godrej Soaps Pvt. Ltd. | India |
| 66 | Triveni Cements (Nepal) Pvt. Ltd. | Cement | Om Prakash Shyam Sundar Agrawal | India |
| 67 | Prathana Storage Tank Pvt. Ltd. | Plastic Storage Tanks | Om Prakash Mundhara | India |
| 68 | Narayani Tyre And Tread Ind. Pvt. Ltd. | Tyre Retreading | Eng. Tyre and Tread Ltd. | India |
| 69 | Nepal Battery Company Limited | Dry Cell Battery | Union Carbide India Limited | India |
| 70 | Amber Restaurant | Restaurant | Deepak Lal Begani | India |
| 71 | Hoechst Nepal (P) Ltd. | Medicines | Hoesht India Ltd. | India |
| 72 | Nepal Beverage And Food Products Ltd. | Fruits & Vegetables | Kissan Products Ltd And Others | India |
| 73 | Shanker Electric Industries Pvt. Ltd. | Electric Bulbs | Ram Nirajan | India |
| 74 | New Tex Garment Pvt. Ltd. | Readymade Garments | Gita Devi Lohia And Others | India |
| 75 | Vouge Garments Industries Pvt. Ltd. | Readymade Garments | Govinda Kant Sharma | India |

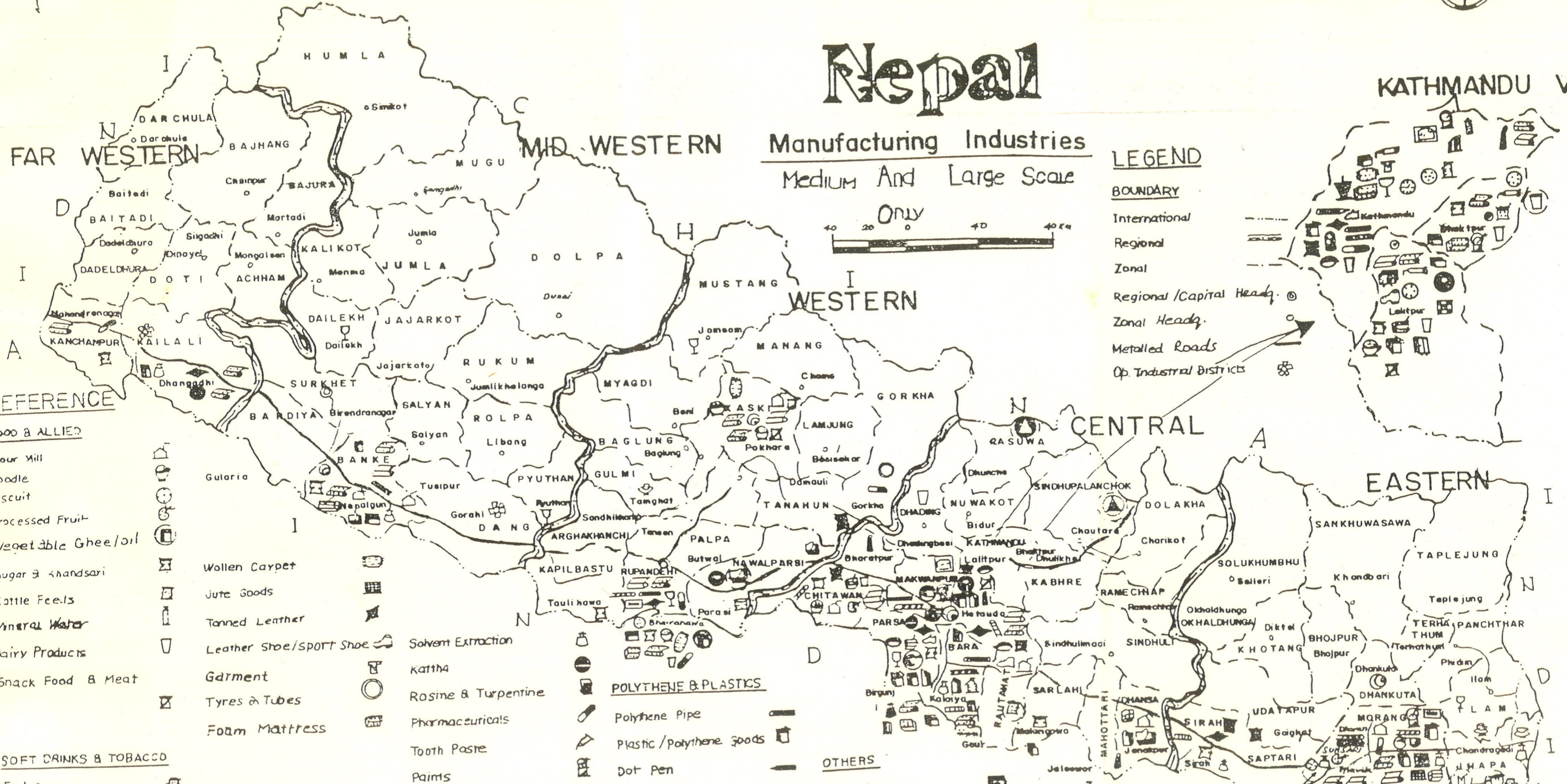
| | | | | |
|------|---|----------------------------------|---|-----------------|
| 76. | Premier Electrical Industries Pvt. Ltd. | Electric Bulbs | Mysore Lamp Works Ltd. | India |
| 77. | Ajanta Textiles Pvt. Ltd. | Polyster Textile | Bhagandas Lohia And Others | India |
| 78. | Luna Nepal Chemical And Fertilizer | Fertilizer | Luna International Pvt. Ltd | India |
| 79. | Gajanand Textiles Pvt. Ltd. | Textile | Ashok Kumar Mittal | India |
| 80. | Cable And Plastic Pvt. Ltd. | HDP Pipes | Fateh Chand Kundalia | India |
| 81. | Agriculture Tools Factory Ltd. | Pumpset | Kirloskar Oil Engines Limited | India |
| 82. | Dalmia Industries Nepal (Ltd) | Dairy Products | Dalmia Dairy Industries | India |
| 83. | Nepal Spinning Weaving & Knitting | Textile | Shri Ram Nirajan | India |
| 84. | Alpha Electronics Pvt. Ltd. | TV | Electronics Consortium Pvt. Ltd | India |
| 85. | Nepal Liquors Pvt. Ltd | Liquors | McDowall Herbertson Caruew Co | India |
| 86. | Hotel Dola Annapurna Pvt. Ltd. | Hotel | Indian Hotels Co. Ltd. | India |
| 87. | Jenson And Nicholson Nepal Pvt. Ltd | Paints | Jenson And Nicholson India Ltd | India |
| 88. | Annapoorna Textiles Ltd | Textile | Chaughmal Jata | India |
| 89. | Himalayan Brewery Ltd. | Beer | Mohan Meaking Breweries Limited | India |
| 90. | Nepal Wood Allied Industries Pvt. Ltd. | Plywood & Tanin | Subodh C. D.S. Goswami | India |
| 91. | Nebico Pvt. Ltd. | Biscuit & Confectionery | Britannia Industries Ltd. | India |
| 92. | Skyland Transport Co. Nepal Pvt. Ltd. | Transport | Rohitash Kumar Agrawal | India |
| 93. | Nepal Orient Magnesite Pvt. Ltd. | Dead Burnt Magnesite | Orissa Industries Ltd. | India |
| 94. | Fashion Apparels Pvt. Ltd. | Readymade Garment | N. K. Kapoor | India |
| 95. | Babusa Apparets Pvt. Ltd. | Readymade Garments | Brendra Khullar | India |
| 96. | Pioneer Fashion Pvt. Ltd. | Readymade Garments | Shiv Kumar Grover | India |
| 97. | International Clothing Co Pvt. Ltd. | Readymade Garment | India Craft | India |
| 98. | Centreal Garment Pvt. Ltd. | Readymade Garments | Jamsed Rustamji | India |
| 99. | Ken Treaders (Nepal) Pvt. Ltd. | Tyre Retreading | Ken Treaders | India |
| 100. | Ami Apparels Pvt. Ltd | Readymade Garment | Ashish Kumar Sengupta | India |
| 101. | Annarula Private Limited | Ice Cream | Nirulas Corner House Ltd. | India |
| 102. | Hotel Baishali Pvt. Ltd. | Hotel | Brij Mohan Kainth And Others | India |
| 103. | Future Packaging Systems | Plastic Pouch | Vinay Kumar Sangal | India |
| 104. | Usha Nepal Hotel And Resort Pvt. Ltd | Hotel | Burr Brown (India) Ltd. | India |
| 105. | Nepal Lever Limited | Soap, Toothpaste | Hindustan Lever Limited | India |
| 106. | National Engineering Pvt. Ltd. | Diesel Pump Set | Rocket Engineering Corpration | India |
| 107. | Himalaya Plastic Pvt. Ltd. | HDP PVC Pipe, Film | Om Prakash Mundhra And Others | India |
| 108. | Electra Nepal Ltd. | Transformer | Arun Kumar Jain | India |
| 109. | Electra Fun World | Amusement Park | Arun Kumar Jain | India |
| 110. | Interocean Cycle Industries Pvt. Ltd. | Bi-Cycles | Interocean Shipping (india) Pvt. Ltd | India |
| 111. | Highland Distillery (P) Ltd. | Liquors | Shaw Wallace And Company Ltd. | India |
| 112. | Hotel Tragopan Pvt. Ltd | Hotel | Pradeep Singh Pawar | India |
| 113. | Aee Laboratories Nepal Ltd. | Medicine | Aee Laboratories Ltd | India |
| 114. | Tara Gaon Regency Hotel Limited | Hotel | Radheshyam Saraf And Others | India |
| 115. | Akash Hotel Pvt. Ltd. | Hotel | Mannchan Gopal | India |
| 116. | Himalayan Leather Co. Pvt. Ltd. | Leather & leather Prod | S.K. Barooah | India |
| 117. | Olympic Zippers Nepal Limited | Zipper | Akhi Kumar Gupta | India |
| 118. | Vasudha Electrodes (P) Ltd. | Welding Rods | Kiran Mehta | India |
| 119. | Momento Apparels Pvt. Ltd | Readymade Garment | Gopal Bhagandas Raheja | India |
| 120. | Hama Iron And Steel Industries | Iron Rolling | Bimal Kumar Saraf | India |
| 121. | Integrated Steel Mill | Melting & Rolling | Bimal Kumar Saraf | India |
| 122. | Everest Rolling Industries Pvt. Ltd. | Iron Rolling Mill | Bined Saraf | India |
| 123. | Usha Nepal Agro Product Ltd. | Vegetable Ghee | Burr Brown Ltd. | India |
| 124. | Sun Apparel Industries | Readymade Garments | Pawan Chaula | India |
| 125. | Neoluxe Pvt. Ltd. | Decorative Laminated Board | Neoluxe Pvt. Ltd. | India |
| 126. | Ocean Plastic And Footwear Pvt. Ltd. | PVC, TPR Comp. F/Ware | Ocean Plastic And Fibre Pvt. Ltd. | India |
| 127. | Vasudha Rosin & Turpentine Pvt. Ltd | Rosin And Turpentine | Raj Kumar Mehata | India |
| 128. | Leatherage Bansbari Shoe Factory | Shoe & Leather Goods | Leatherage India | India |
| 129. | Nepal Professional Garment Pvt. Ltd. | Readymade Garments | K.K. Khanna | India |
| 130. | Kaling And Jemens Pvt. Ltd. | Readymade Garments | M.K. Kohli | India |
| 131. | Uptron Academy of Computer L Centre | Computer Training | Uptron India Ltd. | India |
| 132. | Professional Education & Medical Services | Professional Education | Manipal Education And Medical Board | India |
| 133. | Colour Scan Nepal Ltd. | Colour, Scanning | Apro Scan Exim Pvt. Ltd | India |
| 134. | Ambuja Electric Casting Ltd. | Mild St. Billet Angle | Ambuja Electro Casting Ltd. | India |
| 135. | Bhaktapur Indiyana Dairy Prod Pvt. Ltd. | Dairy Products | Indiyana Dairy Specialties Ltd. | India |
| 136. | Himalayan Health Foods Pvt. Ltd. | Bread, Bakery | Mulhalampet Mahadeven | India |
| 137. | Pashupati Housing And Dev Co. Pvt. Ltd. | Housing, Const. Dev | Mr. Ram Saran Rastogi & Others | India |
| 138. | Padmini Polymers Nepal Pvt. Ltd. | Mineral Water & Plastic Boltting | Padmini Polymers Ltd. | India |
| 139. | Textile Made Up Project | Textile Products | Ashutosh Lodha | India |
| 140. | International Comm. Network Pvt. Ltd. | Sattelite T.V. Broadcasting | Business India Group | India |
| 141. | Bislery Nepal P. Ltd. | Mineral Water | Aakwa Mineral Pvt. Ltd. | India |
| 142. | Cross Country Nepal Hotels P. Ltd. | Hotel | Cross Country Hotels Limited | India |
| 143. | Bashu Linga Sugar & General Inds | Sugar | Vijaya Kumar Goyal | India |
| 144. | Balsara Hygiene Products P. Ltd. | Tooth-paste & Other | Balsari Hygiene Pvt. Ltd. | India |
| 145. | Hotel Windsar Pvt. Ltd. | Hotel | Ram Aabator Goyal | India |
| 146. | Lumbini Modern Mattaibles Pvt. Ltd. | Cable, G. F. Wire | Modern Mattibele Pvt. Ltd. | India |
| 147. | Nepal Lube Oil Ltd. | Lubricant | Gulf Asian Investment Company Ltd. | India, GULF |
| 148. | Nepal Metal Company Limited | Zinc And Lead | Hyderabad Industries Ltd & K.K. Bamford & Co. Ltd | India, Hongkong |
| 149. | Suiya Tobacco Company Pvt. Ltd. | Cigarette | ITC Limited | India, UK |
| 150. | Toscana Nepal Pvt. Ltd. | Leather Shoes | Ballarpur Industries Ltd. | India, Italy |
| 151. | Forest And Livestock Co. Ltd | Milk, Angora, Goat | Chhatra Singh | India, Japan |
| 152. | Everygreen Electronic Pvt. Ltd. | Television | Ram Nirajan | India, S. Korea |
| 153. | Nepal Italia Leather Industries | Leather & Leather Goods | Belvedere S.L.R. | Italy |
| 154. | Everest Food Ltd. | Modern Slaughter House | Himalaya Sago Kahatsu Co. Ltd. | Japan |
| 155. | Trans Himalayan Tour Pvt. Ltd. | Travel Business | Himalaya Kanko Kahatsu Co. Ltd | Japan |
| 156. | Khumbu Alpine Camp Pvt. Ltd. | Hotel | Yoshio Nakagawa | Japan |
| 157. | Hotel Himalaya Pvt. Ltd. | Hotel | Mitsui Real Estate Development Co | Japan |
| 158. | Hills Garments Industries Pvt. Ltd. | Readymade Garments | Chuo Co. Ltd | Japan |
| 159. | Sound And Vision (Industries) Pvt. Ltd. | Television | Matsushita Electric Industrial Co. Ltd. | Japan |
| 160. | Him Electronics Pvt. Ltd. | TV | Sanyo Electric Trading Co | Japan |
| 161. | International Communications Inc | Television, Radio Cassette | Sony Corporation | Japan |
| 162. | Sound Equip & Elec. Appli. Ind. Pvt. Ltd. | Radio & Cassette Player | Matsushita Electric Industrial Co. Ltd | Japan |
| 163. | Nepal Hokke Pvt. Ltd. | Hotel | The Hokke Club Ltd | Japan |
| 164. | Hotel Kido House Pvt. Ltd | Hotel | Hajime Kido | Japan |
| 165. | Tele Tech Systems Pvt. Ltd | Television | Onon Electric Co. Ltd | Japan |

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| 166 | Jaily Nepal Pvt. Ltd. | Hotel | Kensaku Kikuchi And Others | Japan |
| 167 | Hotel JNF Pokhara Pvt. Ltd. | Hotel | Yoshituro Akita | Japan |
| 168 | Hotel Hingui Pvt. Ltd. | Hotel | Salya Narayan | Japan |
| 169 | Nepal Fwa. And Spa. Service Pvt. Ltd. | Laboratory | Yagai Kagaku Co. Ltd. | Japan |
| 170 | Sresco Yamaken Knitwears Pvt. Ltd. | Knitwear | Yamaken Ltd. | Japan |
| 171 | Shivpuri Resort Pvt. Ltd. | Resort Hotel | Tamotsu Hakamura | Japan |
| 172 | Greenland Corporation (Nepal) Pvt. Ltd. | Textile Polyester Yarn | Greenland Corporation | Japan |
| 173 | Hotel Fewa Prince Ltd. | Hotel | Yusu Omori | Japan |
| 174 | Ando Construction Pvt. Ltd. | Housing Dev & Const | Ando Construction Company | Japan |
| 175 | Lumbini Airways Pvt. Ltd. | Internal Air Service | Junko Kajami | Japan |
| 176 | Anupam Foods Pvt. Ltd. | Instant Noodles | Ohtake Noodles Machine Manuf. C. Ltd | Japan |
| 177 | Sundinjal Handicrafts Pvt. Ltd. | Flower | | Japan |
| 178 | Lumbini Mikara Hotel Pvt. Ltd. | Hotel | Honin Stead Corporation Limited | Japan |
| 179 | Saunat Hotel Pvt. Ltd. | Hotel | Wolfram Gulcher | Netherlands |
| 180 | California Brands Limited | Gum & Confection | Golden Horn B.V. Amstardam | Netherlands |
| 181 | Botanical Enterprises | Textile Culture | Jan Beelen | Netherlands |
| 182 | Hansraj Hulaschand Jute Mills | Jute Products | Auckland Holdings Ltd | New Zealand |
| 183 | Nepal Hydro And Electrical P. Ltd. | Transformer & Turbine | EB N. Trans. As & Kvaerner Brug A/S | Norway |
| 184 | Himal Power Ltd. | Hydro Power | Statkraft & Kraerner Energy | Norway |
| 185 | Silver Fibre Textile Mill P. Ltd. | Towel, Bed Sheets | Gulam Abbas Hirani | Pakistan |
| 186 | Hotel Peaceful Place Pvt. Ltd. | Hotel | Naikoo G. Mohammad | Pakistan |
| 187 | Peacock Textile (P) Ltd. | Textile | Galaxy Trading Co. Ltd. | Pakistan |
| 188 | Vivid Textiles Pvt. Ltd. | Textile | Gulam Abbas Hirani | Pakistan |
| 189 | Hotel Karnali Pvt. Ltd. | Hotel | Raja Mohammed Khan | Pakistan |
| 190 | Nova-Knit Nepal Ltd. | Textile & Readymade Garment | Arduna Investment Inc | Panama |
| 191 | Joyli Spinning Mill Ltd. | Textile Yarn | Werner Blaser | Philippines, Switzerland |
| 192 | Mt. Everest Brewery Pvt. Ltd. | Beer | San Miguel Corporation | Philippines |
| 193 | International Bahukendra Ind. Pvt. Ltd. | Micro Electrical Generating | Research & Production Center, Sokol | Russia |
| 194 | M.P. Brick Factory Pvt. Ltd. | Bricks | Min Kyung Machinery Co. Ltd. | S. Korea |
| 195 | Ariyang Korean Restaurant Pvt. Ltd. | Restaurant | Kyung Bea Kim | S. Korea |
| 196 | Nepal Paint Industries Pvt. Ltd. | Paints | Khunsul Chemical Industries Co. Ltd. | S. Korea |
| 197 | Goldstar (Nepal) Industries Pvt. Ltd. | Television | Goldstar Co. Ltd. | S. Korea |
| 198 | Nepal Sub Centre Workshop | Auto Workshop | Jong Min Hwang & Young Chang Koo | S. Korea |
| 199 | Koneco Pvt. Ltd. | Construction | Korean Development Corporation | S. Korea |
| 200 | Nepal Med Limited | Disposable Syringe | Hysoung Corporation | S. Korea |
| 201 | Him Dis Pvt. Ltd. | Disposable Syringe | Shin Woo Corporation | S. Korea |
| 202 | Shiva Needle Industries Pvt. Ltd. | Disposable Needle | Shin Woo Corporation | S. Korea |
| 203 | Good Will Industry Pvt. Ltd. | Photo Album | Shin Woo Corporation | S. Korea |
| 204 | Neko Venture Pvt. Ltd. | Button | Lee Pyung Keun | S. Korea |
| 205 | Krup Textile Pvt. Ltd. | Textile | Shin Woo Corporation | S. Korea |
| 206 | S.N. Knitting Industries Pvt. Ltd. | Socks And Sports Ware | Shin Woo Corporation | S. Korea |
| 207 | MB Petrolube Industries Pvt. Ltd. | Lubricants | Alpha Pacific Petroleum | Singapore |
| 208 | Nepal Churchill Hotel Pvt. Ltd. | Hotel | Accor Asia Pacific | Singapore |
| 209 | Salleri Chialsa Electricity Co. Ltd. | Electricity | Swiss Dev. Cooperation (SDC) | Switzerland |
| 210 | Food Specialists Nepal Pvt. Ltd. | Instant Noodles | Nestle Sa Company | Switzerland |
| 211 | Machan Wildlife Resort | Hotel | Emil Wenadel | Switzerland |
| 212 | Ganesh Cold Storage | Cold Storage | SATA (SDC) | Switzerland |
| 213 | Taini International Pvt. Ltd. | Hotel | Wang Tsun Chen | Taiwan |
| 214 | Trishakti Soap & Chemical Ind. Pvt. Ltd. | Soap | Shino Machinery Company | Taiwan |
| 215 | Sunmoon Computer Industries Ltd. | Computer Software | Raber Enterprises Co. Ltd. | Taiwan |
| 216 | Taini Resort Hotel Chitwan Pvt. Ltd. | Hotel | Wang Tsun Chen | Taiwan |
| 217 | Nepal Thai Food Pvt. Ltd. | Instant Noodles | Mahram Maheshori | Thailand |
| 218 | Nepal Ekarat Engineering Co. Pvt. Ltd. | Transformer | Ekrat Engineering Co. Ltd. | Thailand |
| 219 | General Food Industries Pvt. Ltd. | Instant Noodles | Wan Thai Foods Industry Co. Ltd. | Thailand |
| 220 | Nepal Agro Industrial Products Pvt. Ltd. | Oil & Fat | M. Suchak | UK |
| 221 | Amitronics Pvt. Ltd. | Telephone | General Electric Company | UK |
| 222 | Gorkha Lawrie (Pvt.) Ltd. | Tea | Godrick Lawrie Consultants Ltd. | UK |
| 223 | John Sanday Consultants Pvt. Ltd. | Consultancy | Peter John Tullis Sanday | UK |
| 224 | Power Development Nepal Pvt. Ltd. | Hydropower | Monitor International P. Ltd | UK |
| 225 | Nepal Lubricants Pvt. Ltd. | Lubricant | Castrol Limited | UK |
| 226 | Tiger Mountain P. Ltd. | Hotel | Explor Asia Ltd. | UK |
| 227 | Hotel Monal Pokhara Ltd. | Hotel | Patrickleo Mcswweeney & V. Pariyar | UK, Germany |
| 228 | Karnali Air Service P. Ltd. | Air Services | Vladimir Grvavor | Ukraine |
| 229 | West Nepal Adventure Pvt. Ltd. | Hotel | A.V. Jim Edwards | USA |
| 230 | Mikes Breakfast | Restaurant | Michel W. Frane | USA |
| 231 | Shakti Carpet Industries (P) Ltd. | Carpet Finishing | Fred C. Cagan | USA |
| 232 | Namaste International Pvt. Ltd. | Hotel | Richard Clemente Junior | USA |
| 233 | Niravana Himalayani Water Company | Mineral Water | Shamsher Wadud | USA |
| 234 | Indreni Soyabean Industries | Soyabean Milk | Danish Machinery And International | USA |
| 235 | LTA Nepal Pvt. Ltd. | Readymade Garments | LTA, Inc | USA |
| 236 | Data System International Pvt. Ltd. | Computer Software | International Development Institute | USA |
| 237 | Lotus Studio Pvt. Ltd. | Colour Photo | James Lane Prior | USA |
| 238 | Tiger Tops Nepal Pvt. Ltd. | Hotel | A V Jim Edwards | USA |
| 239 | Interface Pvt. Ltd. | Consultancy | A S. David, Dr | USA |
| 240 | Hotel Vajra Guest House Pvt. Ltd. | Hotel | Edward Perry Bass | USA |
| 241 | Wisdom Light Group Pvt. Ltd. | Solar Modules | Stevon G. Mewrill, And Others | USA |
| 242 | Himalayan Helicopters Pvt. Ltd. | Helicopter Service | Richard Doyle Tuttle | USA |
| 243 | Tectimi Magnetic Pvt. Ltd. | Video Cassettes | Ravindra Rungata | USA |
| 244 | Bottlers Nepal Pvt. Ltd. | Soft Drinks | Coca Cola South Asia Holdings Inc | USA |
| 245 | Sunset Spas East Pvt. Ltd. | Spas | Doyle Taylor | USA |
| 246 | Sunkoshi Adventure Retreat Pvt. Ltd. | Hotel Resorts | Christa A. Skerry | USA |
| 247 | Lotus Energy Pvt. Ltd. | Photovoltaic | Adam F. Friedensohn | USA |



Nepal

Manufacturing Industries Medium And Large Scale



REFERENCE

FOOD & ALLIED

- Flour Mill
- Noodle
- Biscuit
- Processed Fruit
- Vegetable Ghee/oil
- sugar & khandsari
- Cattle Feeds
- Mineral Water
- Dairy Products
- Snack Food & Meat

SOFT DRINKS & TOBACCO

- Tea/Coffee
- Beer
- Soft Drinks
- Distillery/Liquor
- Cigarettes

TEXTILE, WEAVING

APPAREL & FIBERS

- Cotton Textile
- Synthetic Textile

- Gularia
- Nepalgun
- Woolen Carpet
- Jute Goods
- Tanned Leather
- Leather Shoe/Sport Shoe
- Garment
- Tyres & Tubes
- Foam Mattress
- Tea/Coffee
- Beer
- Soft Drinks
- Distillery/Liquor
- Cigarettes
- Cotton Textile
- Synthetic Textile

NON-METALLIC MINERALS

- Cement
- Marble
- Brick & Tile
- Cement Goods

CHEMICALS

- Soap
- Fertilizer

- Solvent Extraction
- Kattha
- Rosine & Turpentine
- Pharmaceuticals
- Tooth Paste
- Paints
- Dry Cell Battery

WOOD, PAPER & ALLIED

- Plywood
- Strawboard
- Cardboard
- Match
- Pulp & Paper

POLYTHENE & PLASTICS

- Polythene Pipe
- Plastic/polythene Goods
- Dot Pen

IRON & STEEL WORKS

- Agriculture Tools
- Stainless Steel Utensils
- Iron Rods
- GIC Sheets
- GI Pipe
- Steel Furnitures
- Tin Containers

OTHERS

- Radio Assembling
- Wrist Watch
- Television
- Copper Utensils
- Gas (Industrial & Household)
- Electrical Machines
- Electrical Accessories
- Barbed/GI Wire & HB Wire
- P.V.C. Wire (Cable)
- Bitumer & Barrel
- Polymer
- Magnesite/Refractory
- Bricks
- Dairy
- Lead & Zinc

LEGEND

BOUNDARY

- International
- Regional
- Zonal
- Regional/Capital Headq.
- Zonal Headq.
- Metalled Roads
- Op. Industrial Districts

KATHMANDU VALLEY



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