

Foreign Investment and Technology Transfer Act 1992

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

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Some Nepal Laws revision Act

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Preamble: 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 year of the reign of His Majesty King Birendra Bir Bikram Shah Dev.

1. Short Title and Commencement:

- a) This Act may be called "The foreign Investment And Technology Transfer Act, 1992."
- b) 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 or 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 Government of Nepal or any other department, office or agency as specified by Government of Nepal.

- g) "Prescribed" or "As prescribed" means prescribed or as prescribed in rules made under this Act or in and order issued by Government of Nepal 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 of technology transfer.
- 2) A person desiring to avail the foreign investment or technology transfer shall be required to make and application to the Department in the prescribed form along with 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 the case of an industry with fixed assets up to five hundred million rupees, itself, and in the case of an industry with fixed assets in excess thereof, in accordance with the decision of the Board, grant permission within thirty days from the date of application. The Department shall communicate the decision made in regard to such permission to the applicant. (*Amended by the First Amendment)

*4) Notwithstanding anything contained. In subsection (1) and (2) above, no permission shall be granted for making foreign investment in the industries set forth in the Annex.

Provided that permission may be granted for the transfer or technology in such industries. (*Amended by the First Amendment)

4.(Deleted by some Nepal laws Revision Act)

5. Facilities and Concessions:

#1) (#Deleted by some Nepal laws Revision Act)

@1a) A foreign investor shall be levied income tax at rate of fifteen percent only, on the income earned form foreign technical as well as management service fees and royalty. (@ Inserted by the First Amendment)

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.

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 or 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 month.

*2) A foreign investor or dependent family or authorized representative of such a foreign investor and dependent family of such authorized representative shall for the purpose of stay in the Kingdom of Nepal be provided a business visa until the foreign investment is retained.

Provided that a foreign investor who, at a time, makes investment in an amount no less than one hundred thousand United States dollar or in convertible foreign currency equivalent thereto, and his dependent family shall be granted a residential visa until such investment is retained. (*Amended by the First Amendment)

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 Katmandu, The laws of Nepal shall be application in the arbitration.

@4) Notwithstanding anything contained in subsections (1),(2)and (3)above , disputes arising in regard to foreign investment made in the industries with investment as prescribed may be settled as mentioned in the foreign investment agreement. (@ Inserted by the First Amendment)

8. Power to Frame Rules:

Government of Nepal 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 there under shall be dealt accordingly.

@9A. Power to Make Alternation or Amendment in Annex:

Government may, by notification in the Nepal Gazette, make necessary alterations or amendments in Part (B) of the annex.

10. Repeal and Savings:

1) The Foreign Investment and Technology Act, 1981 is hereby repealed.

2) All acts performed or action taken under the Foreign Investment and Technology Act, 1981 shall be deemed to have been performed or taken under this Act.

Annex

(Relating to sub-section (4) of section (3) Industries not to be granted permission for making foreign investment)

Part (A)

1. Cottage Industries.
2. Personal Service Business (Business such as Hair Cutting, Beauty Parlors, Tailoring, Driving Training. Etc.)
3. Arms and Ammunition Industries.
4. Explosives, Gunpowder.
5. Industries related to Radio- active Materials.
6. Real Estate Business (Excluding Construction Industries)
7. Motion Picture Business (produced in national languages and the language of the nation).
8. Security Printing.
9. Currencies and Coinage Business.

Part (B)

1. Retail Business.
2. Travel Agency.
3. Trekking Agency.
4. Water Rafting.
5. Pony Trekking.
6. Horse Riding.
7. Cigarette, Bidri (Tobacco), Alcohol (excluding those exporting more than 90%)
8. Internal Courier Service.
9. Atomic Energy.
10. Tourist Lodging.
11. Poultry Farming.
12. Fisheries.
13. Bee-Keeping.
14. Consultancy Services such as Management, Accounting, Engineering and Legal Services.