

# Public Private Partnership and Investment Act, 2018

Date of Authentication

March 27, 2019

Act No. 32 of the Year 2075

An Act to provide for Public-Private Partnership

**Preamble:** Whereas, it is expedient to contribute to economic prosperity of the country through investment even by native or foreign private sector in infrastructure construction and services sectors; to manage the projects to be conducted in public private partnership; and to consolidate and amend to the legal provisions relating to investment;

Be it enacted by the Federal Parliament.

## Chapter -1

### Preliminary

1. **Short Title and Commencement:** This Act may be cited as "(the) Public Private Partnership and Investment Act, 2018.

(2) This Act shall come into force at once.

2. **Definition:** Unless the subject or context requires otherwise, in this Act,-

a) "Monitoring and Facilitation Committee" means the Monitoring and Facilitation Committee referred to in section 9.

b) "License" means a letter of approval or license issued to implement a project under public private partnership as referred to in section 31 and under private investment as referred to in section 35.



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- c) "License Holder" means a person or organization having obtained letter of approval or license to implement a project.
- d) "Consumer" means a person or agency utilizing or using the service or benefit emanating from the infrastructure structure constructed through the public private partnership under this Act.
- e) "One Stop service center" means the One Stop Service Center referred to in section 46 of the Act.
- f) "Office" means the Office referred to in section 10.
- g) "Fund" means the Fund referred to in section 57.
- h) "Board" means the Board referred to in section 5.
- i) "Project" means a Project related to infrastructure structure and service to be implemented through public private partnership, and the word also means a Project of private investment under this Act.
- j) "Infrastructure Structure" means a road, tunnel way, bridge, canal, reservoir, sewerage, cable car, railways, tramway, metro rail, mono rail, sky rail, trolley bus, bus rapid transit, dry port, waterway stoppage, airport, hospital, cold storage, warehouse, public city hall, stadium, hydro power, renewable energy generation such as biological, wind, solar, or atomic thermal and geo-thermal energy generation, transmission and distribution, exhibition hall, amusement park, solid waste processing and management plant, communication and information technology infrastructure, financial market infrastructure, special economic zone, export promotion and processing,



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special industrial zone, tourism sector and the words also include other infrastructure structure and service of similar nature.

- k) "Chief Executive Officer" means the Chief Executive Officer of the Board appointed according to section 12 of the Act.
- l) "Tariff" means service charge to be recovered by a licensee from consumer for making available service or facility.
- m) "Construction" means development, construction or reconstruction of infrastructure structure.
- n) "Prescribed" or "as prescribed" means prescribed or as prescribed under Regulations framed under this Act.
- o) "Private investment" means investment referred to in section 32 of the Act.
- p) "Investment" means investment of loan, equity or refinance or transfer of technology in a Project under this Act.
- q) "Investor" means a person or institution investing or willing to invest in a Project under this Act and the word also includes the person or institution carrying out studies, development, construction or operation of a Project.
- r) "Member" means a member of the Board referred to in section 5 and the word also include Chairperson and Vice-Chairperson.
- s) "Agreement" means a Project Development Agreement, Project Investment Agreement, Concession Agreement or any other type of such agreement to which the



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federal government, provincial government or local government or Government of Nepal Investment Board is a party.

- t) "Concerned body" means any Board, federal ministry, provincial ministry or local level engaged in the implementation and facilitation of a Project under this Act.
- u) "Survey" means preliminary study, research, innovation, environmental study, feasibility study, detail feasibility study to be conducted in the course of implementation of a Project or an act to be carried out for detail project report.
- v) "Public body" means a public body having substantial ownership or control of Government of Nepal or specified as public body by Government of Nepal.
- w) "Public private partnership" means an arrangement of project implementation for construction, operation, restoration of infrastructure structure or for delivery of public service in collaboration with government or public body and private having allocated, or bearing the costs of, resources, returns or risks through any of the methods referred to in sub-section (2) of section 17.
- x) "Public Private Partnership Unit" means the Public Private Partnership Unit to play the roles referred to in section 14.
- y) "Local Level" means a local level referred to in the Constitution of Nepal.



## Chapter-2

### Provisions concerning Approval of Investment, Project Implementation, Investment Board

3. **Approval of Investment:** Notwithstanding anything contained in the prevailing law, the Board shall approve investment of the project having the costs estimate of six billion rupees or more.
4. **Implementation of Project:** Implementation of a project under the public private partnership shall be carried out by the following agencies:-
- a) The concerned local level in case of any project under the jurisdiction of local level according to the prevailing federal law;
  - b) The concerned province government in case of any project under the jurisdiction of province level according to the prevailing federal law;
  - c) The concerned Ministry of Government of Nepal in case of any project under the jurisdiction of federal level according to the prevailing federal law having the costs estimate of up to six billion rupees except hydro power or hydro electricity project having the capacity of 200 MW;
  - d) The Board in case of any project having the costs estimate of above six billion rupees except hydro power or a hydro electricity project having the capacity above 200 MW.



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(2) Notwithstanding anything contained in sub-section (1), in case of a project identified or approved by any agency according to the prevailing law, such project may be implemented through understanding or having entered into a mutual agreement between the concerned agency and the Board.

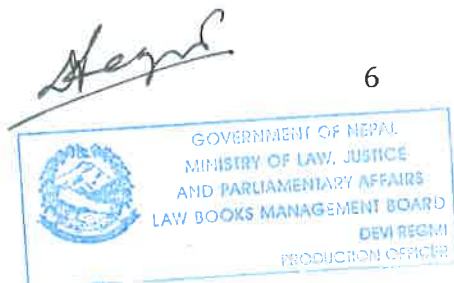
(3) Notwithstanding anything contained in clauses (a) and (b) of sub-section (1), it shall be according to the federal law on the matter of foreign investment in any project under the jurisdiction of local level or province level.

(4) While implementing a project under clause (d) of sub-section (1), the Board shall coordinate with the concerned agency.

5. **Formation of Board:** There shall be a powerful Investment Board for carrying out the functions of promoting investment through the construction of infrastructure and service sector under public private partnership having mobilized national and foreign resources.

(2) The Investment Board referred to in sub-section (1) shall be formed as follows:-

(a)	Prime Minister	-Chairperson
(b)	Finance Minister	-Vice Chairperson
(c)	Minister for Industries, Commerce and Supplies	-Member
(d)	Minister for Forests and	-Member



	Environment	
(e)	Minister for Energy, Water Resources and Irrigation	-Member
(f)	Minister related to the Project	-Member
(g)	Vice-Chairperson of the National Planning Commission	-Member
(h)	Governor of the Nepal Rastra Bank	-Member
(i)	Chief Secretary of Government of Nepal	Member
(j)	Three persons, including at least one woman, nominated by the Board from amongst the experts in industries, tourism, infrastructure development, commercial law and finance sectors	-Members
(k)	The Chief Executive Officer of the Office	Member-Secretary

**6. Appointment of Members, Terms of Office and Removal from Office:** (1) The Chairperson shall appoint the members to be nominated according to clause (j) of sub-section (2) of section 5.

(2) The term of the Office of the members referred to in sub-section (1) shall be of two years. They may be reappointed.

(3) Notwithstanding anything contained elsewhere in sub-section (2), the Chairperson may remove from office any nominated member at any time.

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Provided that while removing from the office, he or she shall not be deprived of an opportunity to defend himself/herself.

(4) In case any member is removed from the Office according to sub-section (3) or resigned, another person to be appointed to the vacant position shall hold the Office only for the remaining term.

7. **Provisions as to Meeting:** (1) Meeting of the Board shall be on the date and at the time specified by the Chairperson.

(2) The meeting referred to in sub-section (1) shall be held at least six times in one fiscal year and the difference of time between the two meetings shall not be more than two months.

(3) The chairperson shall preside over a meeting of the Board and in his or her absence, the vice-chairperson shall preside over the meeting.

(4) The Board may invite the concerned Minister, Secretary of the concerned Ministry, any officer of Government of Nepal or any native or foreign expert to a meeting of the Board.

(5) The Chief Minister of the concerned province or chief of the concerned local level may be invited to discussions to be held on the Projects in the agenda of the Board meeting.

(6) The member-secretary shall record and authenticate decisions of the Board.

(7) Other procedures as to Board meeting shall be as determined by the Board itself.





8. **Functions, duties and powers of Board:** Notwithstanding anything contained in the prevailing Nepal law, the Board shall have the following functions, duties and powers:-

- a) To formulate or cause to be formulated policies relating to public private partnership or projects to be conducted through the public private partnership or projects to be carried out in private investment;
- b) To collect details of potential projects and to study them and prepare list of projects;
- c) To select or cause to be selected the competitive or special priority-accorded projects out of the projects to be implemented through public private partnership or through in private investment;
- d) In case of the projects selected as the projects to be implemented through competitive methods, to prepare list of pre-qualifications, call proposals, evaluate proposals, grant approval of the project, grant approval of investment, grant permission for study, and to enter into negotiations with proponents and to enter into agreements as may be required so as to ensure transparency, fairness and competition;
- e) In case of the projects selected as the ones to be implemented with special priority, to enter into or cause to be entered into agreement for project development, construction and operation;
- f) In case of the proposals directly received to the Board without any call for them, to study them and grant permission for survey or license and to refer to the concerned agency for issuing license, right of way,



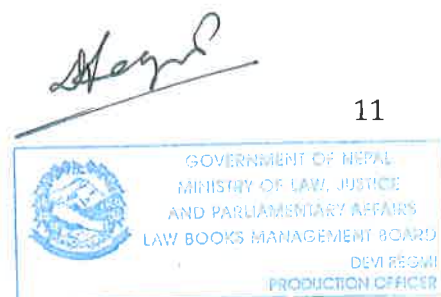
approval of investment and other necessary approval as required according to the law or to approve investment and give approval or conclude or cause to be concluded agreements with the proponent;

- g) To conduct studies of the approved projects and conduct or cause to be conducted monitoring as to whether or not the project is carried out or project is constructed, implemented or operated;
- h) To carry out functions concerning hybrid financing in the areas including infrastructure construction and project development;
- i) To recommend to Government of Nepal to make available financial or non-financial incentives and facilities;
- j) To coordinate and facilitate for purchasing or taking on lease land above ceiling that is required for the project;
- k) In case of requiring permission relating to forests and environment for the study of the environmental impact assessment, to grant or cause to be granted permission having fulfilled the prescribed procedures;
- l) To approve concession agreements including project development agreement and project investment agreements;
- m) To write to the concerned agency of Government of Nepal for permission, license or approval required according to the prevailing law for the implementation of the approved projects;
- n) To coordinate with the concerned agency of Government of Nepal to develop Nepal a destination of



foreign investment having prepared an investment-friendly atmosphere;

- o) In order to attract foreign investment, to have negotiations with the countries which the Board deems fit on bilateral investment agreements and double taxation avoidance agreements or to establish mechanism and to make recommendations to Government of Nepal to conclude treaties and agreements as may be necessary;
- p) To make available necessary expert services and coordinate and facilitate Government of Nepal and other government agencies with regard to construction, operation, restoration or upgrading of infrastructure structure to be constructed through foreign direct investment or public private partnership or delivering public services;
- q) To maintain or caused to be maintained coordination amongst various ministries, concerned provinces, local levels or government and private sectors for project development, investment promotion and projects implementation;
- r) To take speedy decisions with regard to approved projects and to provide prompt solutions to problems;
- s) To approve annual programs and budget of the Board;
- t) To prepare list of investors who have successfully completed the implementation of projects and to have competition with such investors and newly pre-qualified investors on new projects implementation;



- u) To have coordination and collaboration between the Office of the Investment Board and Nepali diplomatic missions abroad to carry out publicity to promote foreign investment and interactions with foreign investors and to depute employees of the Board to such missions as may be required;
- v) To render necessary services through the one stop services center for attracting foreign direct investment and for projects to be operated under such investment;
- w) After financial closure is over, to monitor or cause to be monitored the implementation of such project according to such agreement;
- x) To levy fees, charges for granting permission or license to such investor or for rendering of services and facilitations by the Board for developing the project;
- y) To construct or cause to be constructed infrastructure structure required for the projects facilitated or to be facilitated by the Board from the prescribed investors;
- z) To carry out or cause to be carried out other functions relating to investment promotion as prescribed.

9. **Monitoring and Facilitation Committee:** (1) There shall be Monitoring and Facilitation Committee formed under the chairperson of the Vice-Chairperson of the Board for implementation, monitoring and facilitation of the projects relating to the Board:-

(a)	Vice-Chairperson of the Board	-Convener
(b)	Secretary, Office of the Prime	-Member



	Minister and Council of Ministers (Economic and Infrastructure Development)	
(c)	Secretary, Ministry of Forests and Environment	-Member
(d)	Secretary, Ministry of Agriculture, Land Management and Cooperatives	-Member
(e)	Secretary, Ministry of Urban Development	-Member
(f)	Secretary, Ministry of Industries, Commerce and Supplies	-Member
(g)	Secretary, National Planning Commission	-Member
(h)	Secretary, Ministry related to the Project	-Member
(i)	Chief Executive Officer	-Member
(j)	Chief, public private partnership Unit, Investment Board	Member-Secretary

(2) Functions, duties and powers of the Monitoring and Facilitation Committee shall be as prescribed.

10. **Office of Board:** (1) There shall be one Office called Investment Board, Nepal to carry out functions of secretariat of the Board.

(2) The organizational structure of the Board and list of staffing thereof shall be as approved by Government of Nepal.



(3) The Chief Executive Officer shall be the chief administrative officer working full time.

(4) In case the Office deems appropriate, it may form an advisor group of advisor and Nepali experts with the approval of the Board.

11. **Functions, duties and powers of Office:** The functions, duties and powers of the Office shall be as follows:-

- a) To carry out the functions of selecting the developer for identification, survey, and implementation of the projects under public private partnership and carry out functions including monitoring;
- b) To facilitate the construction, operation, management of projects to be implemented through the public private partnership and through private investment;
- c) To have negotiations and enter into agreements with proponents or investors developer on the basis of terms and conditions approved by the Board and according to the draft of the agreement included in the invitation to proposals;
- d) To motivate the investors to implement the project according to the agreement;
- e) To solve the problems arising out in the course of implementation;
- f) To maintain coordination between government and public agencies, provinces, local levels and private sector for implementation of approved projects;

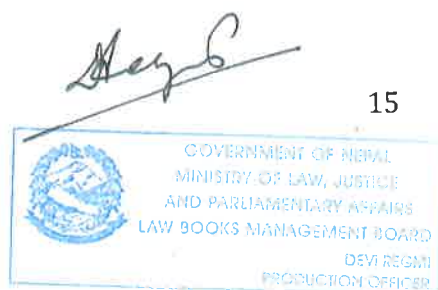




- g) To make provisions of making available of financial and non-financial benefits provided to the approved projects;
- h) In case facilities being provided to any actor or project is inadequate or investment is discouraged due to any other factor, to submit to the Board for taking measures of reform;
- i) To monitor the implementation of project and to make recommendations to the Board for taking necessary action on it or to revoke the license in case the project has not been implemented according to the schedule of time;
- j) To submit suggestions to the Board if special attention has to be paid to any special sector or sub-sector of investment;
- k) To carry out functions relating to protection or promotion of native or foreign investments;
- l) To conduct studies, researches on matters relating to public private partnership and investments;
- m) To carry out administrative or other functions which are within the working areas of the Board or as specified by the Board through decision.

12. **Chief Executive Officer:** (1) There shall be one Chief Executive Officer at the Board to conduct daily administration of the Board and to carry out functions of the Board.

(2) The Chief Executive Officer shall be the chief administrative officer working for full time at the Board and





his or her remuneration and other benefits shall be as specified by Government of Nepal.

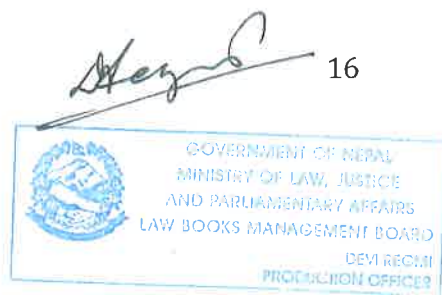
(3) A Nepali citizen having acquired an academic qualification of at least Master's Level in economics, management, commerce, law, engineering, development or the equivalent from recognized university and having had work experience of at least 15 years in project development, public procurement, public private partnership, investment promotion, development administration, project monitoring and evaluation, policy-making sector shall be deemed to have appointed to the office of the Chief Executive Officer.

(4) None of the following persons shall be eligible to be appointed to the office of the Chief Executive Officer:-

- a) Having been convicted by a court in an offence involving moral turpitude including corruption, theft, human trafficking and transportation, rape;
- b) Having been declared bankrupt by being failed to pay debt;
- c) During the time of being blacklisted according to the prevailing law;
- d) Having not completed the age of 40 years;
- e) Having completed the age of 65 years.

(5) A recommendation committee shall be formed under the convenership of the vice-chairperson of the Board and comprising of the vice-chairperson of the National Planning Commission and an expert designated by Government of Nepal.

(6) The committee referred to in sub-section (5) shall make recommendation of three persons for appointment to the



office of the Chief Executive Officer having completed the prescribed procedures on the basis of competition.

(7) Government of Nepal, Council of Ministers shall appoint from amongst the persons recommended according to sub-section (6) to the Office of the Chief Executive Officer.

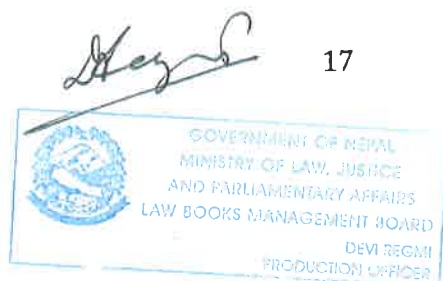
(8) The term of the Office of the Chief Executive Officer shall be of four years and he or she may be reappointed for another one term.

(9) The Office of the Chief Executive Officer shall remain vacant on any of the following circumstances:-

- a) In case he or she is ineligible according to sub-section (4);
- b) In case the resignation he or she has tendered through the Board from the office is accepted by Government of Nepal, Council of Ministers;
- c) In case Government of Nepal, Council of Ministers removes him or her from the office for the lack of working competency, bad conduct or unsatisfactory work performance;
- d) In case his or her term of the Office is over;
- e) In case he or she dies;
- f) In case he or she attains the age of 65 years.

(10) Before removing from the office according to clause (b) of sub-section (9), he or she shall be provided with an opportunity to defend himself or herself.

(11) The person who has completed the term of the office of the Chief Executive Officer shall not be eligible to be involved in a project approved by the Board under this Act for



a period of five years after the date of termination of the office.

**13. Functions, duties and powers of Chief Executive Officer:**

(1) In addition to the functions, duties and powers referred to elsewhere in this Act, the functions, duties and powers of the Chief Executive Officer shall be as follows:-

- a) To prepare a list of the agenda to be submitted to meeting of the Board;
- b) To submit to the Board the projects recommended by the Projects Identification and Prioritization Committee and to initiate necessary process;
- c) To implement the decisions made or directives issued by the Board;
- d) To prepare annual programs and budget for the Board and its Office and to submit to the Board for approval;
- e) To conduct or cause to be conducted monitoring, review, evaluation of the projects approved by the Board for implementation;
- f) To carry out other functions as specified by the Board.

**14. Public Private Partnership Unit:** (1) There shall be one public private partnership Unit at the Office to carry out feasibility study of the projects to be implemented under the concept of the public private partnership, to select the developers and to facilitate the public agencies in constructing and operating the projects and in other matters.

(2) The following shall be the functions, duties and powers of the Unit:-



- a) To prepare working policies, procedures and directives on the policy issues relating to public private partnership and to introduce them to the Board;
- b) To furnish necessary suggestions, advices and consultation to the project investor with regard to implementing the project;
- c) To prepare Expression of Interest for public private partnership, call for pre-qualifications submission, call for proposals, preparing format of project agreement;
- d) To prepare projects bank of the projects to be operated through the public-private partnership and update them;
- e) To conduct evaluation of feasibility reports of the projects to be implemented under the public private partnership and of preparation of the projects and furnish its views;
- f) To conduct evaluation of the implementation status of the projects conducted under the public private partnership, and furnish its views and suggestions;
- g) To prepare the procedures for selecting partners in the projects to be implemented under the public private partnership and to implement or cause to be implemented them;
- h) To regularly conduct studies and researches on practices and experiences of public private partnership at international levels and to offer appropriate subjects or public private partnership formats for Nepal;
- i) To render necessary assistance to the investor in preparation and implementation of the projects to be implemented through public private partnership;



- j) To collect information relating to the projects of public private partnership and maintain record thereof;
- k) To carry out other functions as specified by the Board or Office.

(3) Provisions as to formation, organizational structure and other provisions as to the Public Private Partnership Unit shall be as prescribed.

15. **Investment Unit:** (1) There shall be one Investment Unit at the Office to carry out necessary coordination, collaboration and facilitation for creating an investment-friendly atmosphere for private investment promotion under the Board.

(2) The functions, duties and powers of the Investment Unit referred to in sub-section (1) shall be as follows:-

- a) To formulate policies relating to projects to be implemented under private investment and to submit them to the Board;
- b) To conduct studies of the projects that could be implemented under private investment and to prepare list thereof;
- c) In case of the unsolicited proposals directly received at the Board, to conduct necessary studies on them and to write to the concerned agency for permission, license as may be required;
- d) To prepare drafts of concessions agreements including project agreement, investment agreement and memorandum of understanding;



- e) To maintain coordination between public sector and private sector for project development, investment promotion and project implementation;
- f) To prepare bases for selection of developers of private investment;
- g) To conduct studies, researches on investment;
- h) To prepare details of comparative advantage in respect of foreign investment;
- i) To prepare list of potential investors and to respond to the queries of the potential investors;
- j) To carry other functions as specified by the Board or the Office.

(3) Provisions as to formation, organizational structure and other provisions as to the Investment Unit shall be as prescribed.

**16. Experts Committee or Task Force:** (1) In order to furnish suggestions after studies and researches on any technical aspect of project implementation, the Office may form an Expert Committee or Task Force comprising of members of the concerned sector.

(2) The facilities of the convener and members and officials referred to in sub-section (1) shall be as prescribed.



## Chapter -3

### Public Private Partnership

17. **Project may be implemented:** (1) Any project relating to infrastructure structure may be carried out through the public private partnership.

(2) While carrying out implementation of any project as pursuant to sub-section (1) through the public private partnership, either of the following methods may be applied:-

- a) Build and Transfer (BT);
- b) Build, Operation and Transfer (BOT);
- c) Build, Own, Operation and Transfer (BOOT);
- d) Build, Transfer and Operation (BTO);
- e) Lease, Operation and Transfer (LOT);
- f) Lease, Build, Operation and Transfer (LBOT);
- g) Development, Operation and Transfer (DOT);
- h) Management, Operation and Transfer (MOT);
- i) Rehabilitation, Operation and Transfer (ROT);

**Explanation:** For the purpose of this clause, "rehabilitation" means the act of rehabilitation of an existing infrastructure by repair, expansion or reconstruction.

- j) Similar other method.

(3) While implementing the project as referred to sub-section (2), the process may be implemented in one or more phases of construction, operation, rehabilitation, repair and expansion of any project.





18. **No Project Implementation:** Notwithstanding anything contained elsewhere in this Act, none of the following projects shall be carried out through public private partnership:-
- To be operated with the objective of obtaining any work or service from the private sector without transferring it financial, technical or operational risks;
  - Projects relating to security of the country;
  - Projects, which the Board has specified as the projects not to be implemented on public private partnership.
19. **Priority Determination:** The order of sectoral priority of the projects to be implemented through private public partnership shall be as determined by the Board.
20. **Identification of Projects:** (1) The concerned agency shall have to identify and prepare list of projects that may be implemented through public private partnership.
- (2) The list referred to in sub-section (1) shall state whether or not survey of those projects is carried out, the bases and reasons of identification and other details as prescribed.
- (3) The Board may be consulted on technical and financial aspects while identifying and listing the projects under this section.
21. **Projects to be approved:** (1) Approval of the Board or other concerned agency, according to the working areas, shall be required in order to implement the projects identified according to section 20.



(2) While getting the projects approved according to sub-section (1), if the projects have to be implemented through the public private partnership, it shall be clearly stated that which of the methods referred to in section 17 has to be applied and conditions attached to it, if any.

(3) In case more than one project could be implemented under the public private partnership under the federal, provincial ministry or local level, priority shall accorded again while getting the project approved under this section.

22. **Project List to be published:** Once the projects are approved according to section 21, list of the projects shall be prepared along with the method of its implementation.

23. **Expression of interest may be called:** (1) The concerned agency shall call for expression of interest by publication of a notice for projects approved according to section 20.

(2) The following details shall be stated in the notice referred to in sub-section (1):-

- a) Office or agency to which the expression of interest has to be submitted;
- b) Period for submission of the expression of interest;
- c) Details to be mentioned in the expression of interest;
- d) Documents to be submitted along with the Expression of Interest and financial and technical capacity of the proponent;
- e) Technical and financial capacity of the proponent;



f) Other details as specified.

24. **Expression of Interest to be submitted:** The person willing to conduct the survey or implement the project shall have to submit the Expression of Interest to the concerned agency subject to the prescribed terms and conditions within the period specified in the notice issued according to section 23.

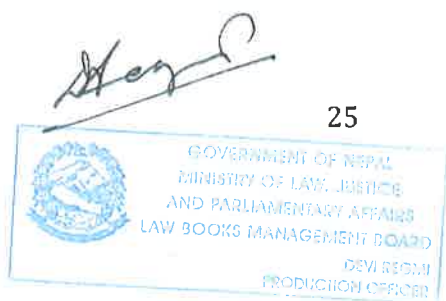
25. **Short-list to be prepared:** Once the Expression of Interest referred to in section 24 is received, the concerned agency shall prepare a short list of the proponents having completed the prescribed procedures and evaluation.

26. **Request for Proposal to be called:** (1) Once the short list of proponents referred to in section 25 is prepared, the concerned agency may invite Request for proposal from the proponents enlisted in that list along with the prescribed subjects.

(2) The proponent willing to submit the Request for proposal referred to in sub-section (1) shall have to submit the Request for proposal to the concerned agency along with the prescribed details within the period specified in the notice.

27. **Request for Proposal to be selected:** (1) Once the Request for proposals are received according to sub-section (2) of section 26, the concerned agency shall select the Request for proposal on the following bases within the prescribed time limit:-

a) Technical proposal along with the bases that the construction would be completed within time;



- b) Proposed royalty amount to be paid to the concerned agency, if any;
- c) Financial proposal along with proposed royalty amount to be paid to the concerned agency, and proposed tariff to be charged on consumers during implementation of the project.

(2) Once the Request for proposal is selected according to sub-section (1), the concerned agency shall furnish information of the same to proponent within the prescribed time.

(3) Other provisions as to selection of Request for proposal under this section shall be as prescribed.

28. **Unsolicited Proposal:** Notwithstanding anything contained in the prevailing law, a proponent on its own submit unsolicited proposal in the prescribed format to the concerned agency along with the prescribed fee for implementing a project through the public private partnership.

Explanation: For the purpose of this section, "unsolicited proposal" means a proposal submitted by a proponent with an intention to develop a project in a situation where the concerned agency has not issued a public notice for inviting the proposal.

(2) While submitting the unsolicited proposal referred to in sub-section (1), the following matters shall be stated:-

- a) Details of the project;
- b) Profile of the proponent along with financial and technical capacity;
- c) Preliminary feasibility report of the project;



- d) Proposed business plan;
- e) Technology to be involved in the project;
- f) Details of the benefits to be obtained from the project.

(3) In case the unsolicited proposal received according to sub-section (1) seems reasonable through evaluation by the Evaluation Committee referred to in sub-section (1) of section 27, survey license or necessary approval for studies, may be issued for development or operation of the project in the prescribed format having completed the prescribed procedures.

(4) After evaluation, in case the proposal received according to sub-section (1) seems advantageous if it is initiated on competitive basis through public private partnership, the concerned agency may invite for competition having regard the same proposal as the Swiss challenge.

Explanation: For the purpose of this section, "Swiss challenge" means the method of evaluation of any unsolicited proposal, in any manner or procedure even by calling to third party, received by any government agency for any project of service sector or of roads, railway and so on with the objective of receiving better quality of proposal than that unsolicited proposal.

(5) While having negotiations on the unsolicited proposal referred to in sub-section (1), in case the proposal of any proponent other than that of the first proponent is approved, the preliminary expenses incurred by the proponent referred to in sub-section (1) in the course of development of the project may be reimbursed as prescribed by the proponent whose proposal has been approved.



29. **Project may be implemented through Negotiations:** (1)

Notwithstanding anything contained in this Act, in case a proponent could not be selected even after calling for Expression of Interest or Request for proposal for at least two times, the concerned agency may cause such project implemented through direct negotiations.

(2) Notwithstanding anything contained in sub-section (1), in case any project is deemed appropriate to be implemented through negotiations for any of the following reasons, the concerned agency may get such project implemented through negotiations:-

- a) Having no possibility of competition owing to the nature or costs of the project;
- b) Having new concept or technology involved;
- c) Project selected as the one to be implemented on national priority basis;
- d) Any project which is not appropriate to adopt the procedures of this Act.

(3) The proponent who wishes to implement any project through negotiation according to sub-section (1) shall have to submit a proposal to the concerned agency along with the prescribed details.

(4) The concerned agency may grant approval to implement the project referred to in sub-section (3) having had detail evaluation of the proposal by following the prescribed methods.





30. **Detail Feasibility Study of Project may be conducted through Negotiations:** (1) Notwithstanding anything contained in this Act, any person willing to conduct detail feasibility study of any project which does not have such study conducted, it shall submit an application along with proposal to the concerned agency for permission of the same.

(2) While conducting an inquiry into the application submitted according to sub-section (1), it seems reasonable to grant permission for the detail feasibility study, the concerned agency shall have negotiations with the applicant and may grant permission for the detail feasibility study.

(3) The person carrying out the detail feasibility study shall have to bear the expenses to be incurred while carrying out such study.

(4) In case the person carrying out the detail feasibility study according to sub-section (2) could not be selected though the competition held for implementing the project of which the detail feasibility study was made, the person who has been selected for implementing the project shall have to bear the expenses incurred for the detail feasibility study.

(5) The amount of expenses to be paid according to sub-section (4) shall be determined by an independent expert.

(6) The study report prepared under this section shall be implemented under this Act.

31. **Letter of approval to be issued:** (1) Once proposal is selected or approval is granted according to sections 27, 28, and 29, the concerned agency shall sign a Memorandum of Understanding





in the prescribed format and grant letter of approval for carrying out study of the project.

(2) While concluding the Memorandum of Understanding referred to in sub-section (1), performance bond shall be executed as prescribed for the purpose of completing the function within the prescribed time.

(3) Notwithstanding anything contained in the prevailing law, if the project has been approved from the concerned agency under this Act and letter of approval has been granted according to sub-section (1), it shall be deemed to have been duly issued according to the prevailing laws.



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## Chapter -4

### Provisions concerning Private Investment

32. **Private Investment:** (1) Notwithstanding anything contained in the prevailing law, any project to be built, operated and managed by private sector in term of such project nature and having an investment of six billion rupees or more, the approval of survey, facilitation and approval of investment of such project shall be carried out by the Board.

(2) Provisions as to ownership of the investor in a project of private investment shall be as prescribed.

(3) Letter of approval for investment shall be granted for the projects relating to private investment according to sub-section (1) having evaluated the proposal on the prescribed ground.

33. **Project Identification:** (1) The Office shall identify, in coordination with the concerned agency, private sector, or other agencies, the projects which may be implemented at the investment of the private sector and the cost of which is more than six billion rupees; and prepare a list thereof and submit it to the Board for approval.

(2) Notwithstanding anything contained in sub-section (1), there shall be no hindrance to submit to the Board the proposals related to the project which are not listed.



34. **Projects to be approved:** (1) The projects which the Office has identified and recommended according to section 33 shall be approved by the Board for implementation.
35. **Letter of approval may be issued by concluding the Memorandum of Understanding:** Once a proposal is approved according to section 34, the proponent shall be provided letter of approval in the prescribed format for carrying out study having concluded a Memorandum of Understanding in the prescribed format.



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## Chapter -5

### Provisions concerning Agreements

36. **Statement of Projects to be submitted:** (1) In case a Memorandum of Understanding has been executed to implementation a project through the public private partnership according to section 31 or through the private investment according to section 35, the proponent shall have to submit the prescribed details to the concerned agency for implementing the project within the period specified in the Memorandum of Understanding.

(2) In case the proponent could not submit such details in case of certain specific project within the period referred to in sub-section (1), it may submit an application to the concerned agency having stated the reasons and bases thereof asking for more time.

(3) In case the reasons and bases are found reasonable upon an inquiry conducted according to sub-section (2), the concerned agency may provide additional time.

37. **Agreements to be concluded:** (1) The concerned agency shall form a negotiation committee to have negotiations with proponents bases on the Memorandum of Understanding executed according to section 31 or 35 and the details received according to section 36 on the matters of terms and conditions of the agreement.

(2) The Negotiation Committee formed according to sub-section (1) shall have negotiation with the proponent as may be



necessary and prepare the final draft of the agreement having stated the following matters:-

- a) Details of the project;
- b) Dates of initiation and completion of the project;
- c) Benefits and facilities to be received by the investor obtaining the letter of approval for implementing the project while carrying out construction or operation of the project;
- d) Duration of the license;
- e) Phase-wise detail of project implementation and implementation table;
- f) Technical standards and norms of the project;
- g) Details as to operation of the project;
- h) Conditions of operation or transfer of project;
- i) Provisions of tariff to be collected from consumers while operating the project;
- j) Provisions as to insurance of the project;
- k) Machines installed in the project and conditions and quality to be maintained at the time of handover;
- l) Fees or royalty to be paid to the concerned agency and method of payment;
- m) Conditions of rescinding the agreement for non-fulfillment of obligations by either side of the parties while implementing the project;
- n) In case the concerned agency has been making any investment in the project, such investment and the return to be received therefor;
- o) Provisions as to land acquisition;
- p) Provisions as to studies or operation of more projects;



- q) Terms and conditions of sub-lease, if any, and other provisions relating thereto;
- r) If project has to be handed over, mane of such agency;
- s) Other necessary issues.

(3) The minutes as well as the document agreed as agreement according to sub-section (2) shall be approved by the concerned agency and agreement shall be concluded with the developer.

(4) The procedures of the Negotiation Committee shall be as determined by the committee itself.

**38. Implementation of Agreements:** (1) For effective execution of the provisions of the agreement concluded pursuant to section 37, all obligations to be fulfilled by the concerned agency, such obligations may arise from license, approval as stated in the terms of agreement have to be fulfilled by the investors.

(2) While executing the provisions of agreement pursuant to sub-rule (1), the office shall make necessary coordination and facilitation with other stakeholder institutions and complying with the terms and conditions stated in the agreement shall be the duty of the concerned stakeholder agency.

(3) The investor shall have to implementation the project subject to the terms and conditions referred to in the agreement and according to the action plan.

**39. Agreements may be revoked:** (1) In case of non-compliance of the terms and conditions of the Memorandum of



Understanding or agreement for implementing the project concluded according to section 37 or non-performance of the works within the stipulated time, the license or approval granted to the developer may be revoked.

(2) In case of revocation of license or approval according to sub-section (1), the developer may not make any claim for compensation with the concerned agency unless otherwise stated in the agreement.

(3) While revoking an agreement with the investor according to sub-section (1), the procedures referred to in the said agreement have to be complied with.

40. **Deemed to be duly carried out:** Notwithstanding anything contained in the prevailing law, the license or approval issued under this Act having approved the project from the concerned agency and the Memorandum of Understanding or agreement entered into with the concerned agency shall be deemed to have been made according to the prevailing law.

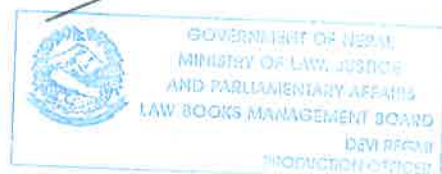




## Chapter -6

### Provisions concerning Facilities and Incentives

41. **Facilities to be entitled to according to Law:** The investment made having obtained permission under this Act shall be entitled to receive, in addition to the facilities according to this Act, all protection, facilities concessions and discount being made available under other prevailing law.
42. **Board may recommend to make available Additional Facilities:** (1) Notwithstanding anything contained elsewhere in this Act, the Board may make recommendation to Government of Nepal to make available additional financial facilities in addition to the facilities to be received under the prevailing laws.
- (2) Notwithstanding anything contained in prevailing law, there shall be no hindrance to utilize the facilities made available under this Act.
- (3) In case any person who got the letter of approval for investment or for studying the project misuses a facility being provided under this Act, the Board may revoke such facility and recover the cost of such facility and impose a fine in the amount equal to the cost of such facility.
- (4) Before revocation of such facility pursuant to sub-rule (2), reasonable opportunity of defense shall be given to the concerned investor.
43. **Provisions of Viability Gap Fund:** (1) Government of Nepal shall establish a Viability Gap Fund for construction, operation



and expansion of the projects that yield positive returns in the long run and are important from infrastructure structure but could not yield reasonable financial returns immediately.

(2) Necessary amount from the fund established pursuant to sub-rule (1) may, on the recommendation of the Board, be made available as capital and operational grant or loan for the prescribed projects on the basis of the prescribed criteria.

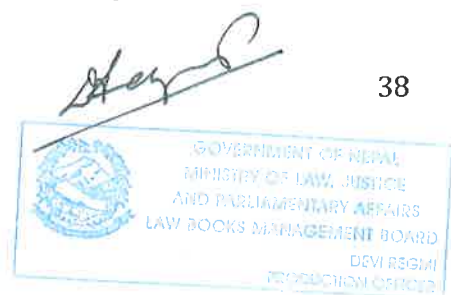
(3) The Fund referred to in sub-section (2) shall have the amount appropriated by Government of Nepal from time to time.

(4) Other provisions as to operation and management of the Fund referred to in sub-section (1) shall be as prescribed.

44. **Additional Incentives may be made available:** In case any developer completes the construction of the development project before the time specified in the agreement or completes the project in less costs than the estimated costs of the project or the quality of the project is higher or Government of Nepal may get more benefits with the use of modern technology, the Board may provide more financial or non-financial incentives to such developer.

45. **Security and Protection of Investment:** (1) No project operated under this Act shall be nationalized during the period of the license.

(2) In case any legal, administrative or policy provision has been made during the validity period of the license or approval against the terms and conditions of such license or



approval or agreement, such provisions shall not be applicable in case of such license, approval or agreement during their validity period. In case of need to acquisition for public purpose, due process shall be followed according to the prevailing law.

(3) In case foreign currency has been invested as loan or share capital for implementation of a project, the person having obtained the license or permission shall be made available exchange service to get the payment or repatriation of principal or interests of such loans, dividend, royalty and other amount of investment.

(4) In case a foreign currency is invested as loan or share capital for implementation of a project, the licensed person shall be made available necessary foreign currency for payment of principal, interest, dividend, royalty of such amount at the prevailing exchange rate according to the prevailing law.

(5) Any project to be operated under this Act shall be accorded national treatment like any other native industry.

Provided that in case of a subject which does not apply national treatment under a federal law, it shall be according to that law.



## Chapter-7

### Provisions concerning One Stop Service Center and Execution of the Project

46. **One stop service center:** (1) For the project to be implemented under this Act, there shall be established an one stop services Center at the Office for cooperating and facilitating obtaining of project license, survey permission, Memorandum of Understanding, investment permission.

(2) The one stop service center established according to sub-section (1) shall comprise of officials representing from the concerned Ministries of Government of Nepal, Departments, and Authorities, public corporations, Nepal Rastra Bank and other agencies.

(3) The functions, duties and powers of the one point services Center shall be as follows:-

- a) To evaluate the proposal received for investment and to take necessary process for their approval;
- b) To make available services of company registration, tax registration, industry registration, approval of the Nepal Rastra Bank, other registration, licenses and approvals;
- c) To make available labour permit, visa permit;
- d) To facilitate acquiring private land for the project;
- e) To make available on lease government land or forests land to be required for the project having fulfilled the required procedures;
- f) To make available approval for environmental studies;



- g) To facilitate for making available access to industrial infrastructures such as approach roads, electricity, transmission line and so on;
- h) To facilitate for getting the financial or non-financial facilities according to the prevailing laws or according to the agreement;
- i) To make available necessary services relating to exchange of foreign currencies;
- j) To work for any other facilitation and cooperation required for the project.

47. **Acquisition of Land:** (1) The person obtaining letter of approval for implementation of the project himself/herself has to manage the land required for implementation of the project.

(2) In case the person obtaining letter of approval for implementing the project according to sub-section (1) requests for acquiring land, necessary facilitation shall be made for acquiring the land for the project according to the prevailing law.

(3) While acquiring land according to sub-section (2), the compensation to be paid to the land owner shall be paid by the concerned investor who obtained the letter of approval.

(4) Notwithstanding anything contained elsewhere in this section, in case the land under the ownership of Government of Nepal or a public land is required for a project, the Board shall, with the permission of Government of Nepal, allow the land to be used on lease or rent as provided for in the agreement.




(5) In case Government of Nepal has acquired any land for any project according to sub-section (3), Government of Nepal may create a land acquisition fund in the Board for payment of compensation for the land and get the compensation to be paid from that fund.

(6) The investor who has obtained letter of approval for implementing the project shall have to reimburse amount of compensation distributed from the Fund referred to in sub-section (5) as provided for in the agreement.

48. **Security of Project:** (1) In case the investor obtaining the letter of approval for implementing the project requests the Board for security showing special reason, the Board may make recommendation to Government of Nepal to make provision of security of such project at the expense of the project and Government of Nepal may make provisions of such security services if the Board makes recommendation to that effect.

(2) Government of Nepal may make necessary provisions of security if the Board makes recommendation according to sub-section (1).

49. **Assistance to be rendered:** (1) Cooperation to be extended to the investor obtaining the letter of approval for implementing the project or approval to be granted or functions to be carried out in the course of implementation of the project by the Board, Government of Nepal, provincial government, or local level shall have to be granted or carried out within the period referred to in the agreement.





(2) In case investor obtaining the letter of approval for implementing the project seeks assistance in the course of implementation of a project and the assistance sought could be made available according to the law, the Board may itself extend such assistance or makes recommendation to the Government of Nepal, provincial government or local level to extend such assistance with the condition that the costs for the assistance has to be borne by the concerned investor obtaining the letter of approval for implementing the project.

50. **Board to refer in writing:** (1) In case the specified agency or official does not issue permit, license or permission within the period specified in the law while implementing a project licensed under this Act, and in case the concerned person files application to the Board stating the same.

(2) In case the Board finds the compliant filed according to sub-section (1) reasonable, it may write to the concerned agency to issue permit, license or permission according to the prevailing law.

(3) In case the writing referred to in sub-section (2) is received, the concerned agency shall issue permit, license or permission within the prescribed time limit and information thereof shall be given to the Board.

51 **Province or Local Level may implement Project:** (1) A province or a local level may implementation projects of infrastructure structure or of service sector within their competence under public private partnership according to this Act.





(2) In case the Board deems it fit to implement any project at a province or local level, it may grant approval to the concerned province or local level to implement the project under public private partnership.

(3) A province or local level may ask the public private partnership Unit for their opinion as to implementation of any project under the public private partnership, and in that case the Unit shall make available its opinion to the concerned level.

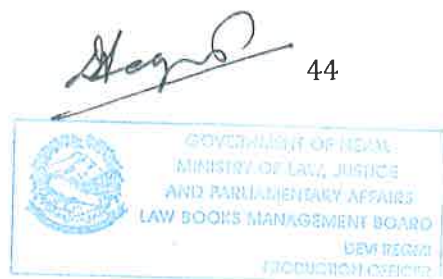
(4) Notwithstanding anything contained in sub-section (1), in case viability gap fund has to be borne by the concerned province or local level for implementation of the project under the public private partnership, it shall implement such project only after obtaining approval from the Ministry of Finance.

52 **Provisions as to Visa:** (1) A foreign citizen coming to conduct studies, researches or surveys of a project licensed under this Act shall be provided with a non-tourist visa of up to six months.

(2) A foreign investor investing in a project or one representative or a member of family of such investor or of representative shall be provided with a visa to live in Nepal according to the prevailing law so long as the investment continues.

Explanation: For the purpose of this section, "member of family" means the husband or wife, father, mother, and dependent children of the investor or the representative.

(3) The office may recommend to the concerned agency to make available visa facility to the foreign investor investing



foreign investment in a project or his or her authorized representative or members of families of such persons having regard to the need and rationale.

**53 Terms and conditions of service may be determined:** (1)

The person obtaining the license may, subject to this Act or the agreement, prescribe necessary terms and conditions while making available services and facilities to the customers.

(2) Customers shall not be allowed to use the services and facilities in contravention of the terms and conditions prescribed according to sub-section (1).

**54 Royalty to be paid:** The person obtaining the license shall have to pay the royalty to the concerned agency according to the terms and conditions of the agreement.

**55 Project to be handed over:** (1) The project implemented under the public private partnership shall be handed over to the concerned agency as stated in the agreement.

(2) While handing over the project according to sub-section (1), the machines, instrument and structure installed to the project shall be in running condition with the capacity and situation specified in the agreement.

(3) Other provisions as to handover or project shall be as prescribed.

**56 Ownership to prevail:** The concerned agency shall own the project transferred under this Act and machine, instruments



and structures installed thereon and house, land and other similar goods and systems relating thereto.



**Chapter -8**  
**Miscellaneous Provisions**

57 **Fund of Board:** (1) The Board shall have its separate Fund.

(2) The Fund referred to in sub-section (1) shall have the following amounts:-

- a) Amount received from Government of Nepal;
- b) Amount of assistance, grant or donation received from foreign governments on approval from Government of Nepal or from national or international organizations;
- c) Amount received as service charges and fees from investors;

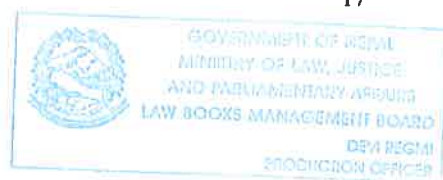
(3) Approval of the Ministry of Finance, Government of Nepal shall be obtained before receiving an amount referred to in clause (b) of sub-section (2).

(4) The amount of capital and administrative expenses required for operation of the Board shall be borne from the Fund referred to in sub-section (1) based on the annual program and budget.

(5) Provisions as to operation of Fund shall be as prescribed.

58 **Accounts and Auditing:** (1) The accounts of the Board shall be maintained according to the accounts system adopted by Government of Nepal.

(2) The Auditor General shall carryout the final auditing. The Board shall manage for internal auditing on its own.



(3) The Board shall make public its financial statement annually.

59 **Provisions concerning Employees:** (1) Government of Nepal may depute employees necessary for the Board on the request of the Board.

(2) The Board may make available facilities to the civil service employees deputed according to sub-section (2) like other employees of the Board.

(3) Notwithstanding anything contained elsewhere in this Act, the Board may appoint on contract basis for expert services as may be necessary and the terms and conditions of service of such persons shall be as stated in the contract.

60 **Annual Report:** (1) The Chief Executive Officer shall prepare the annual report of activities of the Board within six months from the date of completion of each fiscal year and submit to the Board.

(2) The report approved by the Board shall be made public.

(3) The report referred to in sub-section (1) shall contain, among other things, the projects completed by the Board in that fiscal year, the expenditures incurred while carrying out the projects and achievements thereof, operational costs, approved investment amount and number of projects and reforms to be made in future.



61 **Delegation of Agency:** The Board may delegate some of its authorities under this Act to any subordinate officer or Committee or any Office or officer of Government of Nepal.

62 **Compensation to be paid:** (1) In case any party carries out any act in contravention to this Act or Regulation framed hereunder or an agreement in the course of implementation of a Project and another party suffers loss or damage as a consequence thereof, the party causing such a loss or damage shall pay reasonable sum of amount as compensation to the aggrieved party.

(2) For the purpose of sub-section (1), determination of compensation shall be as ascertained by an independent evaluator.

(3) Other provisions as to valuation of the loss and compensation therefor shall be as prescribed.

63 **Grants and Loans Assistance to be accepted:** (1) The Board may accept foreign grant or loan assistance for development and implementation of projects determined by the Board and national priority accorded projects with the consent and coordination of the Ministry of Finance.

64 **Actions may be taken:** In case any investor does not comply with a provision of this Act, the concerned agency may take any or all of the following actions having fulfilled the prescribed procedures:-

- a) To suspend the construction;
- b) To revoke permission or license;



c) To take any other action of similar type.

65 **Settlement of Legal Disputes:** (1) In case of arising out of any dispute between a native and a foreign investor or between Government of Nepal and a foreign investor on any matter of foreign investment, the parties may resolve such a dispute through mutual discussions or negotiations.

(2) In case any dispute could not be resolved according to sub-section (1) within 45 days, parties shall resolve the dispute through negotiation in the presence of the Office.

(3) In case such a dispute could not be resolve within another 45 days while following the method referred to in sub-section (2), such a dispute shall be resolved through arbitration proceedings as referred to in the agreement.

(4) The parties to the dispute shall have to furnish the information of settlement of dispute to the office within fifteen days from the date of settlement of the dispute.

Provided that the parties shall not be compelled to disclose on what terms the settlement was made.

(5) In case the agreement does not provide for procedures of arbitration, the dispute shall be settled through arbitration to be conducted under the arbitration laws of Nepal.

(6) Except the parties to the dispute agree otherwise, settlement of any dispute arising out as to any foreign investment shall be settled through arbitration to be conducted under the prevailing Regulation and proceedings of the United Nations Commission on International Trade Law (UNCITRAL).





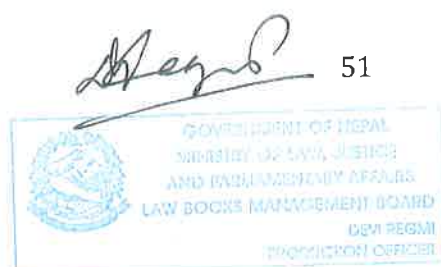
(7) The arbitration to be conducted according to sub-section (3) shall be held in Nepal and the law of Nepal shall apply.

Provided that in case of situation referred to in sub-section (3), the provision of the same sub-section shall apply.

(8) In case no agreement has been concluded between the parties before the dispute arises or they feel that the agreement, if concluded, is inadequate, they may enter into agreement for settlement of dispute. Information of the agreement so concluded shall be furnished to the office.

(9) Dispute may be settled under this Section even in case of the agreement concluded according to sub-section (8).

- 66 **Removal of Hurdles or obstacles:** In case of arising out of any hurdle in the course of implementation of this Act, the Board may remove such hurdle having published a notice in the Nepal Gazette.
- 67 **To be according to this Act:** It shall be according to this Act on the matters provided for in this Act and it shall be according to the prevailing Nepal law on other matters.
- 68 **Liaison with Government of Nepal:** The Board shall liaise with Government of Nepal through the Office of the Prime Minister and Council of Ministers.
- 69 **Powers to frame Regulation:** The Board may, with the approval from Government of Nepal, frame necessary Regulation in order to achieve the objectives of this Act.



70 **Procedures or Directives** to may be formulated: The Board may, subject to this Act and Regulation to be made hereunder, frame necessary directives and procedures and such directives and procedures shall be published in the Nepal gazette.

71 **Repeal and saving clause:** (1) The Private Investment in Construction of Infrastructure Structure Act, 2006 and the Investment Board Act, 2011 have hereby been repealed.

(2) The functions carried out under the Private Investment in Construction of Infrastructure Structure Act, 2006 and the Investment Board Act, 2011 shall be deemed to have been carried out under this Act.

(3) The members and Chief Executive Officer appointed according to the Investment Board Act, 2011 shall be deemed to have been appointed under this Act and they shall hold the Office for the period to which they have been appointed.

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July 07, 2019

