

Investment Board Act, 2068 (2010)

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Act Number 7 of the year 2068 B.S.

An Act made to provide for provisions on Investment Board

Preamble: Whereas, it is expedient to constitute a high powered Investment Board to mobilize the investment of public-private partnership, co-operative and national as well as foreign private sector for economic development, to accelerate the process of industrialization in systematic manner, to develop strong, dynamic and competitive economy by constructing infrastructures and to make meaningful contribution for poverty alleviation by creating opportunity of employment.

Now, therefore, be it enacted by the Constituent Assembly in the capacity of Legislature Parliament pursuant to Article 83 of the Interim Constitution of Nepal, 2063.

1. **Short Title and Commencement:** (1) This Act may be called "Investment Board Act, 2068".
(2) This Act shall come into force immediately.
2. **Definition:** Unless the subject or context requires otherwise, in the Act,
 - (a) "Board" means the Board constituted pursuant to Section 3.
 - (b) "Member" means member of the Board and this term also includes the chairperson of the Board.
 - (c) "Office" means the office of the Board established pursuant to Section 6.
 - (d) "Investment" means project investment made pursuant Section 9.

- (f) "Prescribed" or "as Prescribed" means prescribed or as prescribed in the Rules framed under this Act.

3. Formation of the Board: The following investment Board shall be constituted to create environment for investment in infrastructure development and in other sectors and to mobilize and manage the investment of public private partnership, co-operative and national as well as foreign private sector.

- (a) Prime Minister - Chairperson
- (b) A minister designated by the Prime Minister - Vice-chairperson
- (c) Finance Minister - Member
- (d) Industry Minister - Member
- (e) Forest Minister - Member
- (f) Vice-chairperson of the National Planning Commission - Member
- (g) Governor of Nepal Rastra Bank - Member
- (h) Chief-Secretary of the Government of Nepal - Member
- (i) Four persons with at least a woman from among the experts in the field of industry, tourism, infrastructure development, commercial law and financial sector - Member
- (k) Executive Chief of the office -Member-secretary

4. Procedure relating to the meeting of the Board: (1) A meeting of the Board shall be held in such date, place and time as specified by the chairperson.

(2) The chairperson shall chair a meeting of the Board and in his or her absence; the vice-chairperson shall chair a meeting.

(3) The Board may invite the concerned line minister, the secretary of the concerned ministry, any officer of the Government of Nepal or a national or foreign expert in a meeting of the Board.

(4) The Member-Secretary shall authenticate and maintain the record of the decision of the Board.

(5) Other procedure relating to the meeting of the Board shall be as specified by the Board itself.

5. Functions, duties and powers of the Board: The functions, duties and powers of the Board shall be as follow;

- (a) To formulate or cause to formulate investment policy.
- (b) To select or cause to select competitive or priority sector from the sectors of investment as referred to in Section 9.
- (c) To select the project for possible investment, to cause to invite proposal for investment in the selected project, to cause to make evaluation of the received proposal, to cause to make negotiation with the investor, to grant approval for the investment and to cause to conclude an agreement with proposer.
- (d) To monitor or cause to monitor whether the construction, implementation or operation of the project is running as per the agreement related to the investment.
- (e) To specify economic or non-economic facility and to provide the specified facilities accordingly.

Provided that, the specified facility shall be provided as per the set criteria and the procedure.

- (f) To cause to prepare criteria relating to the analysis of the project, to specify terms and conditions for the investment and to cause to make an agreement with the investor.

- (g) To provide necessary land pursuant to the prevailing law for approved investment.
- (h) To co-ordinate or cause to co-ordinate between various ministries as well as government and local bodies for the promotion of investment.
- (i) To take prompt decision and to promptly address the problem of the project.
- (j) To mobilize Nepali Missions situated abroad for the promotion of investment.
- (k) To perform or cause to perform other act as specified for the promotion of investment.

6. **Office of the Board:** (1) There shall be an office of Investment Board to make inquiry in to the project investment to be granted approval by the Board and to recommend to the Board for approval.

(2) The Executive chief, to work as a full time holder, shall be the chief official of the office.

(3) The office may, on the approval of the Board, form a team of advisors or Nepali experts as it deems necessary.

Provided that, the service of a foreign expert may be availed in the condition of unavailability of Nepali expert.

(4) The office may, as it deems necessary, invite the concerned expert, entrepreneur, businessperson, investor or any officer or employee of the government of Nepal or any employee of a corporate body owned by the government in a meeting of the office.

(5) The procedure relating to inquiry and evaluation of a project investment shall be as specified by the Board.

7. **Functions, duties and powers of the office:** The office shall have the following functions, duties and powers.

- (a) To invite proposals of investment for competition in the project approved by Board.
- (b) To evaluate as well as analyze the investment proposal submitted by investors and to submit it to the Board accordingly.
- (c) To negotiate and conclude agreement with an investor on the basis of terms and conditions approved by the Board.
- (d) To motivate an investor for implementing the project as per the agreement.
- (e) To monitor the implementation of the project and to recommend to the Board for cancelation of the license where it is found that the project is not implemented as per the time frame.
- (f) To solve the problems seen in the course of the implementation of the project.
- (g) To admonish the investor for not implementing the approved project within time frame and to recommend to the Board for action where the project is not implemented despite of admonition.
- (h) To manage for providing specified economic or non-economic facility to the investors.
- (i) To submit suggestions to the Board for reform where investors are not motivated for making investment due to insufficient facility provided in a sector or for any other reason.
- (j) To submit suggestions to the Board where it is necessary to give special priority to a sector or sub-sector of specific investment.
- (k) To carry out administrative and other function specified by the Board.

8. Expert committee or taskforce: (1) The office may, on the approval of the Board, form expert committee or task force in order give suggestion to the Board by making study or analysis of particular technical aspect of the project investment.

(2) The expert committee or taskforce shall submit its report within specified time upon making study in the matters specified by the office.

(3) The procedure relating to the acts and activities of the expert committee or taskforce shall be as determined by the office.

9. Project investment: (1) Notwithstanding anything contained in the prevailing law, the investment necessary for the implementation of the following project shall be implemented under this Act;

- (a) Investment to be made in fast track road, tunnel, railway, rope way, trolley bus as specified by the Government of Nepal,
- (b) Investment to be made in the construction of international as well as regional level airport and in modernization and management of the running airport,
- (c) Investment to be made in the management and refinement plant of dump,
- (d) Investment to be made in chemical fertilizer production factory,
- (e) Investment to be made in the plant of petroleum refinery,
- (f) Investment to be made in the construction of big bridge specified by the Government of Nepal,
- (g) Investment to be made in Bank and financial institution to be established in foreign investment having more than fifty one percent or in the establishment or operation of insurance or reinsurance company,

- (h) Investment to be made in medical college as well as hospital or nursing home having more than three hundred beds,
- (i) Investment to be made in hydro power project having the capacity of Five hundred or more than five hundred megawatt,
- (j) Investment to be made in the establishment of special economic zone, export promotion or refinement zone, special industrial zone or information technology park,
- (k) Investment to be made in any infrastructure or service industry having fixed capital of Ten hundred million rupees or having more than Ten hundred million rupees project cost,

Explanation: For the purpose of this clause infrastructure or service industry shall mean construction industry, mine industry, tourism industry or air industry.

- (l) Investment to be made in any productive industry having fixed capital of Ten Hundred Million Rupees or having more than Ten Hundred Million Rupees project cost.
- (m) Investment to be made in priority sector having the nature as referred to in from Clause (a) to (m) specified by the Government of Nepal.

(2) Notwithstanding anything contained in Sub-section (1) ,in case, an investor submits a complaint to the Board stating that he/she faces any obstacle, difficulty or discourage in the process of investment made pursuant to the prevailing law, the Board shall make a decision as may be required and give direction to the concerned body to abide by such decision.

10. An application to be submitted to the Board: (1) A person, whoever, intends to make investment in a project as mentioned in Section 9 shall submit an application to the Board in the prescribed format with the proposal of investment and the fee as prescribed.

(2) Upon the receipt of the application pursuant to Sub-section (1) the Executive chief shall make preliminary assessment of the application, and in case, the proposed investment project is found to be appropriate he/she shall initiate the process of the inquiring and evaluation of the financial, environmental, technical and social aspect of the project within seven days.

(3) Upon the receipt of the application pursuant to Sub-section (1) the office shall make necessary evaluation of the application within Thirty days and shall submit recommendation to the Board whether to give or not to give approval to the concerned project investment.

Provided that, in case, recommendation cannot be submitted within the aforesaid period due to a reasonable cause, the Board may extend the time as may be required.

(4) In case, any study, appraisal or inquiry is to be required in a technical aspect of the proposed project investments before making recommendation pursuant to Sub-section(3), the office may cause to make study, appraisal or inquiry through expert committee or taskforce pursuant to Section 8.

(5) The Board shall, within Seven days from the date of reception of the recommendation pursuant to Sub-section (3), make decision whether to approve the project with or without any condition or not to approve and shall provide information thereof to the applicant.

(6) In case, negotiation with concerned applicant is to be required before providing information to the applicant pursuant to Sub-section (5)

the Board may hold negotiation with concerned applicant through the office.

(7) In case ,negotiation is to be held before providing information pursuant to Sub-section (6) the office shall invite the applicant for holding negotiation by setting out the venue and time of negotiation within Seven days of the decision of the Board.

(8) After holding negotiation pursuant to Sub-section (6) ,the Board shall ,on the basis of recommendation of the office, make decision whether to give approval with or without any condition or not to give approval to the project and shall provide information of the decision and shall also provide information of the decision to the applicant.

(9) Where the project investment is approved pursuant to Sub-section (5) and (8), the Board shall issue license in prescribed format upon collecting prescribed fee to implement the project under prevailing law.

(10) The applicant shall collect license within Fifteen days from the date of receiving the notice of the approval granted pursuant to this section upon fulfilling required terms and conditions and the investor shall complete the process of the registration of the project and company pursuant to prevailing law within Fifteen days.

(11) In case, the investor fails to collect license or fails to register the company as well as the project pursuant to Sub-section (9) or (10) due to a reasonable cause, the applicant may request the Board through the office to extend time for collecting license or for giving effect to registration, as the case may be, by setting out aforesaid cause and the Board may extend reasonable time for the said purpose.

Provided that, generally the extension of time period shall not be more than One month.

(12) In case, environmental impact study or assessment of the project issued license pursuant to Sub-section (9) is to be carried out notwithstanding anything contained in the prevailing law, the Board shall give Three months time for such purpose by considering the nature of project, and the investor shall complete the study or assessment within such time frame and shall submit the report thereof to the prescribed body in such format as prescribed.

(13) In case, the investor fails to make study within the period as referred to in Sub-section (12) and make request in writing to the Board to extend the time frame, the Board may extend the time frame upto Three months.

(14) The concerned body shall complete study on environmental impact assessment report submitted by the investor and shall make decision within Twenty one days.

(15) In case, the concerned official fails to make decision pursuant to Sub-section (14) except in the circumstances of *force majeure*, the Board may recommend the Government of Nepal to take action against such official pursuant to prevailing law.

(16) Notwithstanding anything contained elsewhere in this Act, the project shall not be constructed only on the ground of approval obtained pursuant to Sub-section (9) or on the ground of registration made pursuant to Sub-section (10) where such project requires environmental impact assessment pursuant to the prevailing law.

(17) In case, an investor initiates the construction of a project without fulfilling the process as referred to in this Section, the Board may take any or all of the following actions;

- (a) To prevent construction of the project
- (b) To cancel the license of the project

- (c) To take the project in control and to confiscate the property thereof.

11. To be deemed the fulfillment of the process: (1) Notwithstanding anything contained in the prevailing law, in case, a project is approved by the Board pursuant to this Act and the investor obtains license pursuant to Section 10, such license shall be deemed to have issued by fulfilling the procedure pursuant to the prevailing law.

(2) No legal, administrative or policy provision having adverse impact shall be imposed on the terms and conditions of the license issued pursuant to Sub-section (1) until the license expires and any legal, administrative or policy provision which causes adverse impact on the license shall not be valid.

12. Facility pursuant to prevailing law to be obtained: An investment made after receiving license pursuant to this Act shall be entitled to obtain all protection, facility, concession and exemption to be obtained under the prevailing law relating to industrial enterprise and foreign investment and technology transfer or under any law including the facility provided by this Act.

13. Executive chief: (1) There shall be an Executive Chief in the Board to carry out daily administrative business and the function of the Board.

(2) The Executive Chief shall be chief administrative official as a full time holder and his/her remuneration and other facilities shall be as specified by the Government of Nepal.

(3) Any Nepali citizen having the following qualification shall be eligible to be appointed as an executive chief.

- (a) Who holds at least masters degree from recognized academic institution in Economics, Management Engineering, Project Analysis or Commercial Law

and holds at least Ten years experience in the concerned field and deserves high level expertise.

(b) Who has attained Thirty Five Year of age.

(4) The Government of Nepal shall, for the purpose of recommending a person to be appointed as an executive chief to the Board, constitute a selection committee under the Convener-ship of the vice-chairperson of the Board in which vice chairperson of National Planning Commission and one former secretary of the Government of Nepal shall be the members and the said committee shall, on the basis of competition, recommend Three persons to the Board for appointing Executive Chief by fulfilling the prescribed procedure.

(5) The Government of Nepal, cabinet shall appoint a person from among recommended persons pursuant to Sub-section (4) in the post of Executive Chief.

(6) The tenure of the office of the Executive Chief shall be Four years and he/she may be reappointed for another one term.

(7) The office of the Executive Chief shall fall vacant in the following circumstances.

(a) If he or she tenders resignation to the Board.

(a) If he or she dies.

(c) If the Government of Nepal removes him/her from his/her post where his/her standing of work performance is not satisfactory.

(d) If his/her tenure expires.

(8) Before removing the Executive Chief from his/her office pursuant to Clause (c) of Sub-section (7), he/she shall be given a reasonable opportunity to defend him/herself.

14. Functions, duties and powers of the executive chief: (1) In addition to the functions, duties and powers of the Executive Chief as provided in this Act, the Executive Chief shall have the following functions, duties and powers;

- (a) To prepare the agenda to be submitted in the meeting of the Board.
- (b) To prepare the list of proposals received by the Board and to submit it to the Board by making evaluation.
- (c) To implement the decisions and directives made by the Board.
- (d) To prepare annual budget and programmes of the Board as well as office and to submit it to the Board for approval.
- (e) To monitor and evaluate or to cause to monitor and evaluate the implementation of the project approved by the Board for implementation.

(2) Other functions, duties and powers of the Executive Chief shall be as prescribed.

15. Appointment, tenure and removal of members: (1) The Prime Minister shall appoint the persons to be nominated pursuant to Clause (i) of Section 3 as a member of the Board and the tenure of the office of such member shall be Two years. Such member may be re-appointed.

(2) If a nominated member tenders resignation to the prime-minister, dies, the Prime Minister removes him/her from his/her office where the standard of work performance of such number is not satisfactory or his/her tenures expires, nominated numbers shall be relieved from his/her office.

(3) In case, a nominated member is relieved from his/her office pursuant to Sub-section (2), next person shall be appointed as a member only for the remaining period.

16. Special provisions relating to the approval of project:

Notwithstanding anything contained elsewhere in this Act, the Board may provide approval for investment in any sector of investment by direct negotiation in the following circumstances;

- (a) Where the proposal cannot be selected in required number despite the invitation of proposal for at least Two times.
- (b) Where there is no possibility of competition.
- (c) Where the investment includes new concept or technology.
- (d) Where the investment cost is more than Twenty Hundred Million Rupees.
- (e) Where it is not appropriate to follow the procedure as provided in this Act for any reason.

17. Board may provide extra-facility: (1) Notwithstanding anything contained elsewhere in this Act, in addition to the facilities provided by Section 12 during the commencement of this Act, the Board may, by publishing a Notification in Nepal gazette, provide such extra facilities as prescribed to such project as prescribed.

(2) Notwithstanding anything contained in the prevailing law, there shall be no bar to consume the facilities provided pursuant to this Act for the prescribed period.

Provided that, in case, the Board finds that a facility provided while granting approval has been misused by a project, the Board shall terminate such facility. Before terminating the facilities, an opportunity for defense as prescribed shall be provided.

18. Safety and protection of investment: (1) An investment made pursuant to this Act shall not be nationalized during the period of license.

(2) Where an investment received approval in a sector on the basis of competition, no permission which causes adverse impact on the said investment shall be granted for a prescribed period to make any other investment in the same sector and to make an investment having same nature.

(3) Save as provided anything in the license, generally the terms and conditions of the license shall not be altered, upon the issuance of the license.

- 19. Difficulty to be removed:** In case, any difficulty arises while implementing this Act, the Government of Nepal may remove such difficulty by issuing an order in Nepal gazette.
- 20. To be according to this Act:** Matters set forth in this Act shall be governed by this Act and other matters shall be governed by the prevailing law.
- 21. Liaison with the Government of Nepal:** The Board shall make liaison with the government of Nepal through the office of the Prime Minister and the Council of Ministers.
- 22. Power to frame Rules:** The Board may frame necessary Rules to implement the objectives of this Act.
- 23. Dissolution of Board:** (1) The Government of Nepal may dissolve the Board for any reasonable cause.

(2) Upon the dissolution of the Board pursuant to Sub-section (1) title liability and property of the Board shall be transferred to the Government of Nepal