LEGISLATION FORMULATION AND IMPLEMENTATION IN FEDERAL NEPAL

NEPAL ECONOMIC FORUM

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EXECUTIVE SUMMARY

Nepal was declared a federal democratic republic in 2008 and a new constitution was promulgated in 2015. With the new state and governance structure, there were major changes to be made in the existing legislation and the overall regulatory environment of the country. Hence, the processes of formulation, amendment, and enactment of legislation began to institutionalize federalism and help the three tiers of government, federal, provincial, and local levels exercise the powers within their jurisdiction.

In the course of overhauling the legislation, several business-related legislation was also tabled for amendment. Some of the legislations were outdated and needed immediate changes, nonetheless, due to political transition, it had remained unchanged for a long gap affecting businesses and the overall economy. While the formulation, enactment, and implementation of some of such legislations were swift, some legislations faced numerous barriers leading to a state of uncertainty for businesses. Hence, this study aims at decoding the legislation formulation process of Nepal under the federal structure; track the status of business-related legislation presented at the legislatures, and analyze the factors that hinder the formulation and implementation of legislation in Nepal with case studies.

The first part of the study contextualizes the legislation formulation process under the federal structure, which takes place in three tiers – the federal parliament, state parliament, and local assembly. The general practice is that the draft legislations or the bills are presented in the respective parliaments, discussed, and amended upon requested modifications, approved by the parliament followed by assent and enactment of the bills as legislations. While the process is encoded and consistent for all legislations, the time taken between the formulation and enactment of the legislation cannot be generalized and can vary from months to years. This is reflective of inconsistencies in the efficiency of the legislature of Nepal. The second part of the study, thus, delves into the factors that hinder the efficiency of the legislature and how it affects businesses.

When it comes to fostering the business environment and gearing up the economy, efficient formulation/amendments of legislation and their implementation is crucial since it removes the risk of uncertainty for businesses and boosts investors' confidence. However, in Nepal, the functioning of the legislature in most parts is steered by the executive or the ruling government, and political issues overpower the functioning of the legislature. For instance, the indecision in selecting the Speaker candidate held the lower house of the federal parliament as a hostage for over a month this year. Likewise, the beginning and proroguing of the parliament that should be determined by the legislature itself, in practice, is determined by the government. So, despite the legislature trying to achieve the finalization of pending bills within the given session, the goal may not be achieved as the timeline of the session can be altered on government's will. On the other hand, the lawmakers of the parliament themselves also are a barrier to the efficiency of the legislature. There have been instances where the absence of lawmakers in the parliamentary sessions has led to failures in securing the required quorum to vote for a bill and pass it with the majority. Similarly, frequent protests from the lawmakers in the parliament sessions regarding political issues have also, in many cases, halted the parliamentary proceedings. Besides, political polarization among the parties has led to difficulties in partisan compromises regarding the bills further delaying the process. Moreover, since the lawmakers are new to a federal setup, inadequate training, especially at the subnational level has led to a capacity deficit of the lawmakers in formulations of legislations. All of these factors cumulatively lengthen the process of legislation formulation and its approval in the parliament, thus, increasing the period of uncertainty for businesses and hampering their confidence in the business environment.

The drafting and formulation of legislation are important steps to the enactment of the legislation, however, until the legislation is properly implemented, it cannot bear the fruits of its enactment. For this, some of the factors to be considered are removal of the contextual barriers to implement the legislation, clear communication of the desired outcomes of the legislation, and there should be well-managed interagency coordination. The failure to achieve any of this can lead to failure in the implementation of the legislation. In terms of contextual barriers, the capacity deficit of the implementing

agency in terms of resources can lead to the failure of implementing the legislation. Here, the case of the Insolvency Act of Nepal is explored where lack of a dedicated office, lack of cross border insolvency policies, lack of competent judges and practitioners to conduct the insolvency proceedings have led to a stalemate in the insolvency framework of Nepal. This has also curtailed Nepal's business competitiveness on a global stage.

The case of the Social Security Act is used as a case where ineffective communication of the legislation and failure to remove the contextual barrier has led to failure in its implementation. The Act has provisions of creating social security schemes under which it can create social protection programs. One such scheme under the Act is the establishment of the Social Security Fund (SSF) which was launched in 2018 and was to be mandatorily implemented since May 2019. The SSF was established for the operation and management of the social security of the employees from the amount collected as the contribution from employee and employer. Despite the grand launch of the scheme, it was widely rejected by the business community for two major reasons. First, two other funds – Employees Provident Fund (EPF) and Citizen Investment Trust (CIT) - have continued to function, which has made the co-existence of SSF with them confusing. If the framework of the coexistence or merger of these funds was developed before the launch of the fund and well-communicated, businesses would likely participate in the fund. However, rushing the launch of the fund without adequate institutional provisions has led to the failure in its implementation.

Clear communication of the desired outcomes of legislation is another deciding factor for the efficient implementation of legislation. To explain this, the study examines the Foreign Investment and Technology Transfer Act (FITTA). While the legislation is aimed at drawing foreign investments into Nepal, there are provisions in the Act that communicate otherwise. For instance, certain industries and sectors have been restricted from foreign investment. The government's parochial approach of restricting competition and foreign investment for sectors in the negative list with hopes of restricting competition in said sectors is counterproductive rendering such sectors inefficient. It also shows the investors that the government is a facilitator of protectionism, which is against free-market practices, hence undermining the objective of the legislation itself. The case of

poor interagency coordination has been explored using the case of the Foreign Exchange Regulation Act (FERA) which incurs a lot of overlaps and discrepancies. There are noticeable discrepancies between the government's regulations regarding repatriation. For example, even though FITTA provides that Nepal Rastra Bank (NRB) has to only be notified regarding the repatriation once the approving authority has approved, however, under FERA and NRB Circular, NRB is not just a notifying body, it is an approving authority of the repatriation. Thus, there is no clarity on whether notification in itself would suffice until the provisions of FERA and NRB Circular are amended. Such weak interagency coordination has led to confusion among businesspersons and investors decreasing the efficiency of the legislation.

Overall, to alleviate the existing inefficiencies in the legislative system of Nepal, it is crucial that it operates independently of the executive and eliminates the above-mentioned hurdles in the formulation and implementation of legislation.

ACRONYMS AND ABBREVIATIONS

CIT	Citizen Investment Trust
DOI	Department of Industry
EPF	Employment Provident Fund
FDI	Foreign Direct Investment
FERA	Foreign Exchange Regulation Act
FITTA	Foreign Investment and Technology Transfer Act
HoR	House of Representatives
MoLJ	Ministry of Law and Justice
MP	Member of Parliament
NA	National Assembly
NRB	Nepal Rastra Bank
OCR	Company of Registrar's Office
PAN	Permanent Account Number
PC	Parliamentary Committee
SA	State Assembly
SME	Small and Medium Enterprise
SSA	Social Security Act
SSF	Social Security Fund

1. Context of the study

After a decade-long civil war, Nepal was declared as a federal democratic republic in May 2008 and the process of formation of a new democratic constitution began. Given the continued disputes concerning the governance system and structure of state under the federal system, it took seven years and two Constituent Assemblies to promulgate the current Constitution of Nepal 2015.

With the formation of the new constitution, the main structure of the Federal Democratic Republic of Nepal was categorized into three levels, namely the Federation, the State (commonly termed as Province), and the Local level with each level being able to exercise their powers according to the new constitution. Likewise, the legislative structure was divided into three tiers: a bicameral federal parliament, unicameral state assemblies for seven states, and unicameral municipal or village assemblies for 753 local bodies. Accordingly, each Legislature began the process of drafting legislations exercising their powers on matters according to them by the constitution. In this process, alongside numerous other legislation, a significant number of economy/business-related legislation were drafted, amended, and replaced. Some of the legislations were outdated and needed immediate changes, nonetheless, due to political transition, it remained unchanged for a long gap affecting businesses and the overall economy. While the formulation, enactment, and implementation of some of such legislations were a swift process, some legislations faced numerous barriers leading to a state of uncertainty for businesses. Hence, this study aims to achieve the following objectives:

Figure 1 Objectives of the study

1.1 Legislation Formulation in Nepal

The formulation of legislation or 'Act' in Nepal requires the 'Bill' to be presented in the Parliament of Nepal. A 'Bill' can either be drafted by the Government of Nepal or by an independent member of parliament (MP) as a non-governmental Bill. The overall process of formulation of legislation can be classified into two stages:

1. Drafting the Bill and registering with the Parliamentary Secretariat, and;
2. Tabling the Bill at the Parliament for approval

1.1.1 Drafting and Registering of the Bill with Parliament Secretariat

There are mainly government and private Bills to be produced in the parliament. Most of the Bills are produced by the government to the parliament. However, MPs can register private Bills in the parliament secretariat. The public Bills are drafted by the Ministries, which is termed as the 'line Ministry'. The line Ministry drafts the Bill and sends it to the Ministry of Finance to get agreement on financial liabilities that would be created by the Bills during its implementation in the future. The draft Bill is then sent to the Ministry of Law, Justice and Parliamentary Affairs to check whether the Bill is under the Constitutional provisions. Finally, the line Ministry sends the Bill to the Council of Ministers. The Bill evaluation committee within the Council of Ministers recommends the Bill to the Council. Once the Council approves the Bill, it is sent to the federal parliament secretariat for registration.

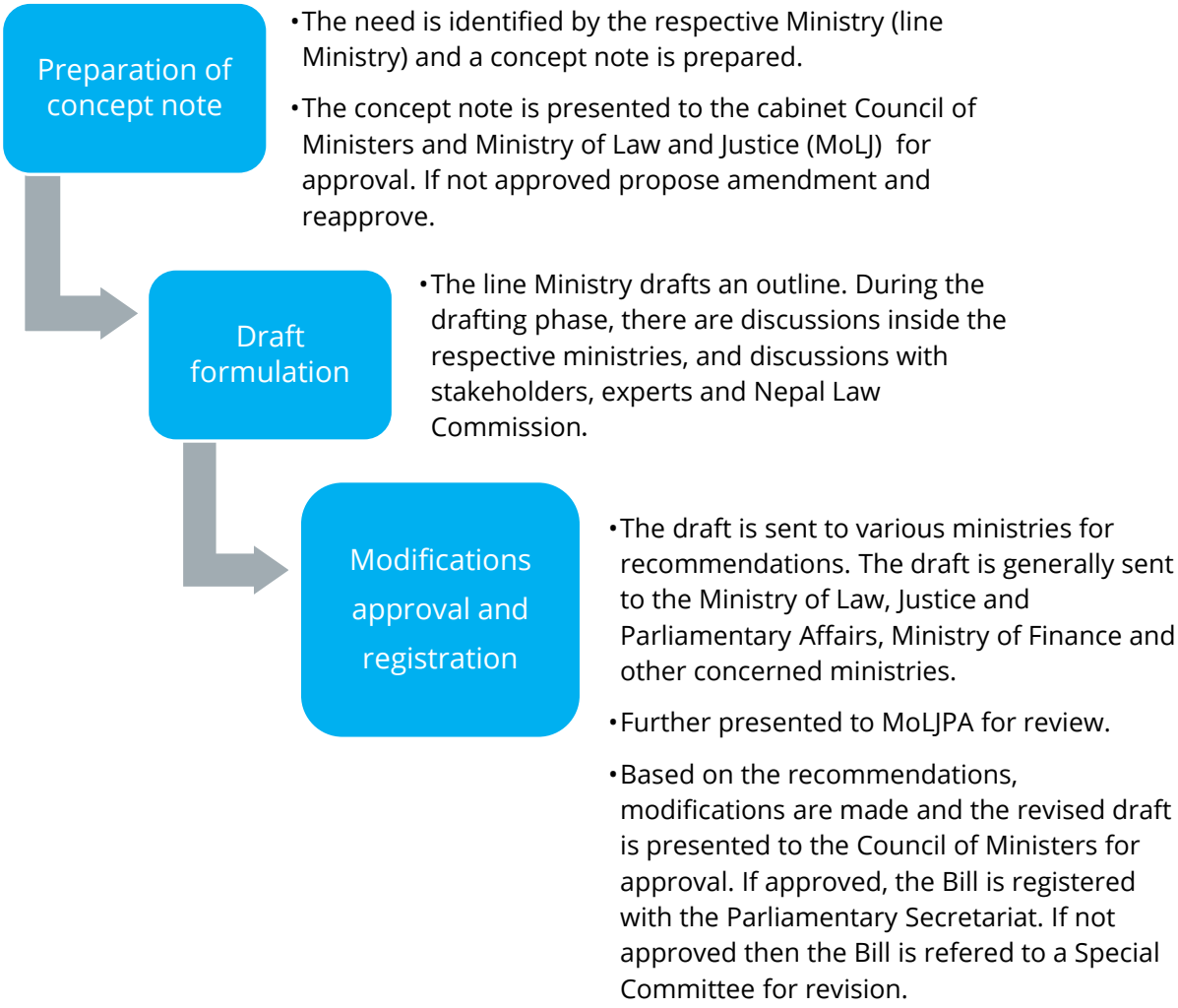
1.1.2 Tabling the Bill at Parliament for Approval

The general procedure of tabling a Bill is that the Bill section of the parliament secretariat examines the Bill whether they are under the prescribed format and contain the essential elements of the Bill. Once the Bill is registered, they are made available to the MPs for reading. The Bill is then tabled on the house through the minister of the related line Ministry. It is called the first reading. On the next successive sitting, the minister proposes for the discussion (only principle) on the house but MPs can protest against Bill for further discussion (second reading). Once the floor accepts the Bill to be forwarded for discussion by a simple majority, and then the house gives the mandate to discuss on the floor or to

send it to the related committee. The house has the discretion to decide whether to send it to the committee or not.

Any member intending to introduce a Bill shall give notice of intention to introduce a Bill to the Secretary-General or Secretary. They must submit a statement of objectives and reasons along with the Bill, at least seven days in advance.

Figure 2 Process of tabling the bill at parliament for approval



While this is the general procedure, all three tiers of Legislature have a different procedure to tabling the Bill at the parliament based on the nature of the parliament (bicameral or unicameral). The details of the three variations of the process are presented in the sections below:

1.1.2.1 Federal Parliament

Nepal's federal parliament is a bicameral structure legislature comprising of the Upper House or the National Assembly (NA) and the Lower House or the House of Representatives (HoR). The HoR comprises of 275 members whereas NA comprises of 59 members. The members of the HoR elect Speaker and Deputy Speaker among themselves and the members of NA elect Chairperson and Deputy Chairperson among themselves.

Similarly, the federal parliament has committees, namely, Legislative Committee, Thematic Committees, and Special Committees formed under the legislature parliament to assist in its regular activities. The thematic committees in particular deliberate and submit reports to the House on the Bills relating to the Organ of Constitution and the line Ministry within the scope of such committee. There are 16 thematic committees within the federal parliament – 10 in the HoR, 4 in the NA, and 2 common committees.

Steps	Stages	Actions
1	Introduction of the Bill at the parliament	Introduction of the Bill can be in any house - House of Representatives (HoR) or National Assembly (NA). Money Bill is an exception - it shall be introduced only in HoR. Likewise, Money Bill and Bill concerning security bodies such as Nepal Army, Nepal Police, etc shall be introduced only as a Government Bill.
2	Discussions, revisions, and approval	The full-house of parliament discusses the draft and sends the draft to the respective parliamentary committee (PC)[1]. A deadline is set for any member of parliament (MP) who wants to put up any revisions to any clauses in the Bill. If any revisions are recommended, those are discussed in the respective PC. The modified draft is then sent to the full

[1] There are 16 thematic committees in the federal parliament - ten in the House of Representatives, four in the National Assembly and two common committees.

		house of the parliament for approval. For approval, a simple majority is needed.
3	Transfer of Bill to the other house and approval	The Bill is transferred to the other house and if approved, then it is presented to the President for assent. This marks the formal enactment of the Bill as Act. The Bill passed by the HoR and transferred to NA must be returned with approval or suggestions within two months from the date of receipt. In case of failure on the part of NA to return even after two months, HoR may present the Bill to the President for assent by passing a resolution[2] by the majority of the total number of members of its present members.
4	Enactment of legislation	Once the Bill gets approval from both of the houses, it is presented to the President for assent. A Bill to be submitted to the President must be submitted by the Speaker or the Chairperson of the House (in which the Bill originated) after it has been certified. In the case of Money Bill, Speaker has to certify. Assent by the President marks the formal enactment of the Bill as Act.
Exceptions		
Rejection of Bill by one of the houses: If a Bill (other than money Bill) passed by one house is rejected by the other or passed with amendments- Bill must be returned to the House where it originated. The Bill can be presented to the President if the HoR (considering the rejections or amendments made by the NA) passes it again with or without any changes by the majority of the total number of members of its existing members.		
Revisions proposed by President: The President shall assent to the Bill submitted within fifteen days. If the President believes that any submitted Bill (except for money		

[2] Resolution- General Opinion of the House of approval or disapproval of an Act of the Government - has to be written and recorded.

Bill) requires reconsideration, then he/she shall return the Bill within fifty days from the date of submission of such a Bill to the House where it originated. Any Bill returned by the President for reconsideration is passed by both the Houses as it is or with amendments then it shall be re-submitted to the President and the President shall give assent to it within fifteen days of such submission.
Discontinuation/Dissolution of a Session of a House: If a Bill is under consideration and the session is dissolved or discontinued for any reason, the deliberation shall continue in the succeeding session. However, a Bill will lapse if the HoR is dissolved or its term expires when a Bill is introduced in HoR or when a Bill passed by HoR is under consideration in NA.
Money Bill: A money Bill is transferred to the NA and NA shall then send it back to the HoR after deliberation within fifteen days from the receipt of the Bill with suggestions. In case the NA does not send the money Bill back even after fifteen days - the HoR may present it to the President for assent.
Joint Bills: There are certain Bills which are referred to a joint sitting of both Houses and if a joint sitting passes the Bill, as it is or with amendments, the House which originated the Bill shall present it to the President. Such Bills are listed under Article 109 (9) of the Constitution of Nepal.
Bill Withdrawal: One who introduced the Bill may withdraw it with the approval of the House.

1.1.2.2 State Parliament

Steps	Stages	Actions
1	Introduction of the Bill at the parliament	Bills have to be introduced in the state assembly. A Money Bill and any Bill concerning peace and security shall be introduced only as a government Bill.
2	Discussions, revisions, and approval	The full-house of parliament discusses the draft and sends the draft to the respective parliamentary committee (PC). A deadline is set for any member of parliament (MP) who wants to put up any revisions to any clauses in the Bill. If any revisions are recommended, those are discussed in the

		respective PC. The modified draft is then sent to the full house of the parliament for approval. For approval, a simple majority is needed.
3	Enactment of legislation	A Bill passed by the State Assembly (SA) must be presented to the Chief of State by the Speaker of the SA once certified by him or her. In the case of Money Bill, the Speaker of SA shall certify. A Bill presented to the Chief of State must assent to the Bill within fifteen days.
Exceptions		
Revisions proposed by Chief of State: If the Chief of State believes that the Bill needs further deliberation then it can be sent back to the SA within fifteen days from the date of submission. In such a case, the SA may pass it again as it is or with amendments and resubmit it to the Chief of State and he/she shall give assent to the Bill within fifteen days. A Bill becomes an Act once the Chief of State gives assent.		
Withdrawal and Dissolution/Discontinuation of a Session - Same as federal law**.**		
State powers must be consistent with the federal law and shall be held invalid in case of inconsistency. The State power has been listed under Schedule 6 and 7 of the Constitution of Nepal.		

1.1.2.3 Local Level (Village or Municipality)

The local assembly can be a Municipal Assembly or a Village Assembly. The procedure for legislation formulation by village assembly or municipal Assembly shall be the same as provided for in the State law. The Village Assembly and Municipal Assembly can make necessary laws on the issues listed under Schedule 8 and 9 of the Constitution of Nepal.

1.2 Tracking the status of business-related legislations

While in a centralized system, it was easy for businesses to keep track of the legislation, in a federal structure, where 761 authorities are drafting legislation, this process became confusing and complicated for businesses. Hence, this study has compiled all the

business-related legislations formulated, amended, and replaced since the promulgation of the Constitution in 2015 that have been provided in Annex 1 to 8.

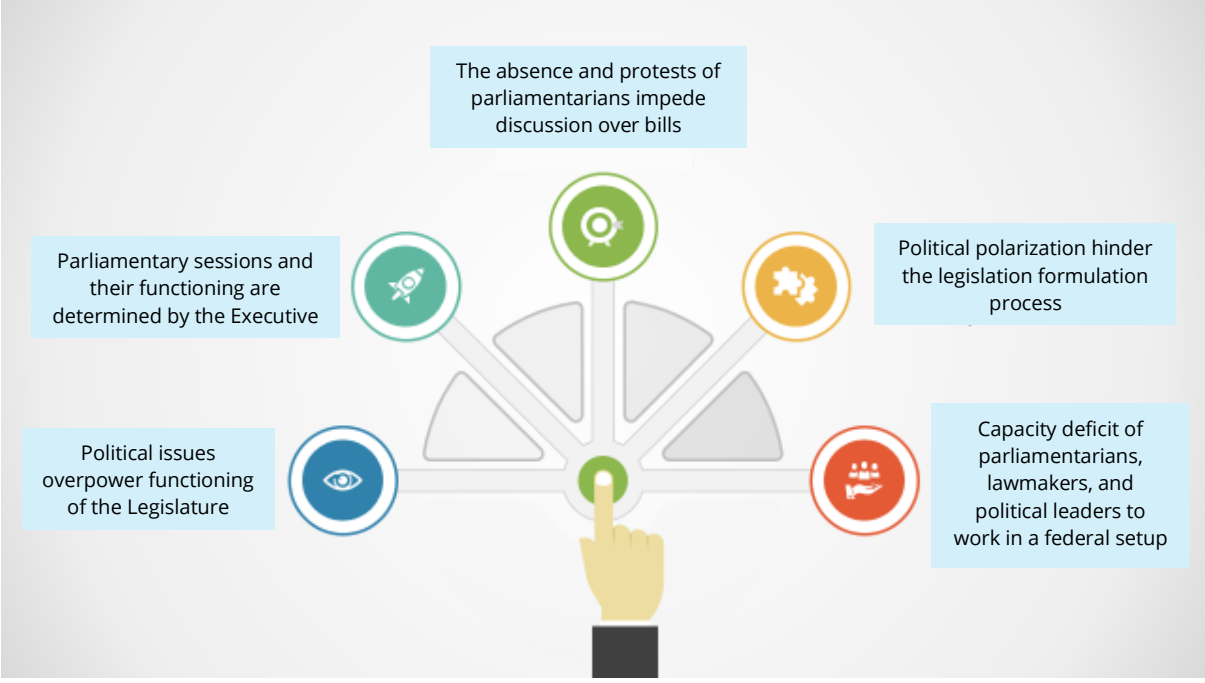
2. Barriers to legislative efficiency

While numerous bills have been presented at all three tiers of Legislature to execute their jurisdiction, the approval process of some legislations is swift while others are in limbo for a long time. Hence, this section delves upon, in two parts, the factors that affect the formulation and enactment of legislation in Nepal.

2.1 Factors affecting the formulation of legislations

In Section 1, we have detailed the normal procedure of the formulation of legislation in Nepal but the duration of execution of this process is not guaranteed by the law, except for the Money Bill. In this Section we thus, delve into the following factors that affect the formulation of legislations and hinder the efficiency of the legislature:

Figure 3 Factors affecting the formulation of legislation



Political issues overpower functioning of the Legislature: Nepal's parliament rather than being a platform to discuss policy-related issues, constitute laws, formulate policy, and direct and guide the government, historically, has always functioned as a tool of the

ruling governing party.[1] The recent event of the power struggle within the ruling party to appoint the Speaker and Deputy Speaker of HoR is an example of how political issues have profound ramifications on parliamentary sessions. The indecision in selecting the Speaker candidate held the HoR hostage for over a month of the 'bills session' when multiple bills were supposed to be discussed and authenticated.

1. **The parliamentary sessions and their functioning are determined by the Executive:** For the past three decades, House sessions have always been called as wanted by the government of the day. Some attribute the failure to adopt a parliamentary calendar to political instability and the long-drawn transition with no government serving a full five-year term. The abrupt proroguing of the sixth parliamentary session on 2 July 2020 is such an instance where the session did not even last for two months. The incumbent Prime Minister KP Oli had bypassed the parliament's Speaker and recommended that President Bidhya Devi Bhandari issue a notice about ending the budget session to avoid a vote of no-confidence in the House.[2]
2. **The absence and protests of parliamentarians impede discussions over bills**: According to Article 94 of the Constitution of Nepal, one-fourth of the HoR members should be present at the meeting to table any proposal on bills or pose any questions for taking decisions on it. However, there are many instances when failure to secure the required quorum of parliamentarians (25% of 275 members i.e. 69 members) in the session has led to postponements of meeting. For instance, on 1 March 2020, the proposal seeking deliberation on 'Nepal Rastra Bank (Third Amendment)-2076 was supposed to be tabled in the parliamentary meeting; however, the meeting was postponed as only 54 members were present.[3]
3. Similarly, the parliamentarians do not hesitate to bring political issues within the parliament and make it a rostrum for protests and halting parliamentary proceedings. For instance, in July 2019, the house was stalled two times within a week after parliamentarians representing the opposition parties Nepali Congress and Rashtriya Janata Party-Nepal stalled HoR proceedings demanding a probe into

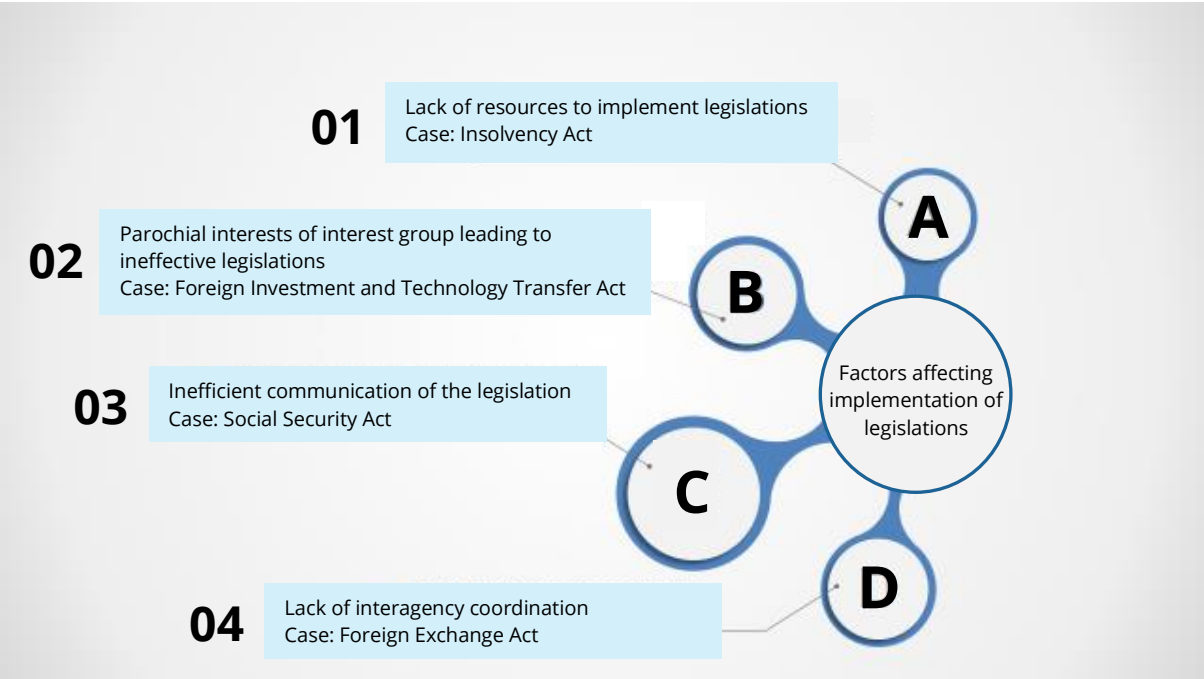
various murder incidents.[4] Likewise, in February 2020, the opposition party had obstructed three consecutive meetings of the HoR opposing the Commission for the Investigation of Abuse of Authority moves to implicate one of its influential leaders in a scam.[5]

4. **Political polarization impeded the legislation formulation process:** Having a divided government slows down the legislative process and the delay is made even worse when the level of party polarization is higher, which makes partisan compromises even more difficult[6]. To this, in the case of Nepal, three parties with varying political ideologies have led the government of Nepal since 2015. In light of the recurrent political instability and parties failing to secure a majority in the parliament, it was natural that Nepal's Legislature was ineffective in formulating laws in the past decades.
5. **The capacity deficit of parliamentarians, lawmakers, and political leaders to work in a federal setup**: Federalism is a new state construct in Nepal and the transition from a centralized structure to a federal setup requires rigorous exercise in part of all the relevant stakeholders. However, lack of expertise and training to the parliamentarians, especially at the sub-national level has led to delays in the formulation of legislation.

2.2 Factors affecting the implementation of legislations

After surpassing all these hurdles, if a Bill is enacted into an Act, the Act is subjected to various challenges for implementation. For example, post the promulgation of the Constitution in 2015, there are sixteen (16) Acts under the fundamental rights of the constitution that are yet to be materialized though they were enacted two years back. However, this is not a recent dynamics. It is a long-running inefficiency in the implementation of legislation in Nepal that has led to confusion, conflicts, and individuals and institutions being deprived of using their rights and facilities garnered by the legislation. This effect is even more pronounced when it comes to legislation relating to the socio-economic development of the country. In the section below, we explore how the failure to implement legislation correctly has affected businesses and enterprises with specific case studies:

Figure 4 Factors affecting the implementation of legislations



2.2.1 Lack of resources to implement legislations

Implementation of legislation cannot be achieved without strong institutions with sufficient resources and capacity to carry it out. The state of Nepal's insolvency law is an example of how limited capacity of one form or another constrained implementation of this legislation.

Case Study 1: Insolvency Act 2006

1. Why is it important to businesses?

An effective insolvency system provides an important pillar of support for the domestic banking system by enabling banks to curtail the deterioration of the quality of their claims, including claims on the corporate sector, whether through a court-approved restructuring or, where necessary, through an efficient liquidation. Insolvency reform can be particularly relevant for economies in transition, where it can play a critical role in addressing the problems of insolvent state-owned enterprises. In Nepal, the Insolvency Act 2063 was enacted to provide for administration and proceedings of companies, which are insolvent or going to be insolvent i.e. being unable to pay the debt to the creditors or facing financial difficulties.

Some of the provisions of Nepal's Insolvency Act that affect businesses in Nepal are listed below:

1) **Restructuring scheme:** The legislation is based on the principle of "one law, two systems" as it covers for both the law of liquidation and law of restricting/rescue. It provides for liquidation options for businesses after restructuring if the restructuring fails or a change from a restructuring procedure to a liquidation procedure if it is found appropriate. Likewise, a restructuring program can be prepared for a liquidating business, if the liquidator believes so based on data. This saves viable businesses from going into liquidation.
2) **Operations during the liquidating/restructuring process:** The Act has made the provision to appoint the Liquidator to insolvent company so that company and related persons need not receive any kind of prejudice. Similarly, the liquidator may make the necessary motion to restructure the company if deemed possible.
3) **The liquidator or the restructuring manager will take control of the management of the company:** The liquidator/restructuring manager will take in his/her custody and control all assets, accounts, and books of accounts of the company, except for properties in possession of secured creditors and manage them. The employees are terminated on the date of the assumption of the office of the liquidator unless ordered otherwise by him.
4) **Creditors' meetings and creditors' committees:** The Insolvency Act requires consultation with the creditors during the liquidating process. In case of liquidation, the liquidator is required to call a creditors' meeting to prepare the liquidation report. Creditors can also form a committee, not exceeding five members to assist the liquidator in the process. In the case of restructuring, the restructuring manager should seek inputs and approvals of the creditors in coming up with a restructuring program.
5) **Payment priority:** As per the legislation, employees and workers get priority after the cost of restructuring or liquidation is settled. Working directors do not get a priority in the payment of their remuneration. The government is no longer a preferred creditor, and all governmental claims are treated as unsecured debt.

6) **Protecting the rights of secured creditors:** The legislation protects the rights of the secured creditors, by ensuring recovery of their lending regardless of restructuring or liquidation. This boosts investors' confidence.

2. Provisions of the legislation that foster the business environment

The insolvency laws propagate and encourage the idea of risk-taking among businesses. If the process of liquidating a financially distressed business is simplified and made efficient, doing business becomes easier. It even encourages new innovative ideas, as entrepreneurs get access to routes of market exits as well. Post liquidation, the Act also provides a 'clean exit and a fresh slate'. The following features of the legislation allow the business to foster:

1) **Access to insolvency proceedings:** The Act provides for easy access to the insolvency proceedings. Under the Act, 10% of the creditors, or 5% of the total shareholders of the company, or 5% of the debenture holders can initiate insolvency proceedings. Previously it was a minimum of 50% of the total outstanding dues, which is why investors or lenders were always at risk.
2) **Restructuring Scheme:** As the Act recognizes both reorganization and liquidation and provides for liquidation after restructuring if the restructuring fails, it boosts confidence and encourages business innovation.
3) **Smoother facilitative process:** The legislation lays down the insolvency proceedings systematically. If implemented with time-bound provisions, it could free resources that have been tied up. Having a smoother facilitative process would allow companies and people to use these resources better and create newer ventures.

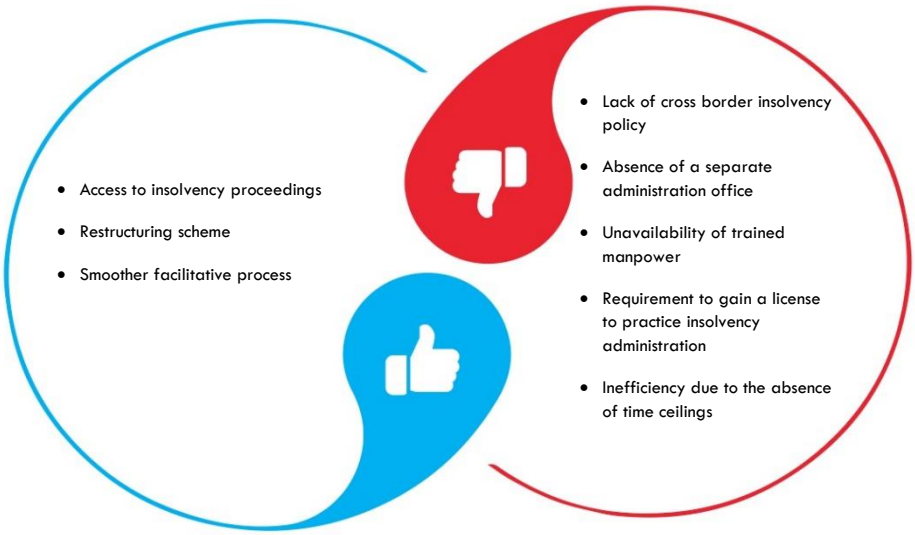
3. Barriers to implementation of the Act

1) **Lack of cross border insolvency policies:** If a parent company based in foreign territory closes, the implications for its branches in Nepal are absent in the reigning Insolvency Act. Since a large number of branches of international

companies are stationed in the country, clear policy options for such cases are a necessity.

2) **Absence of a separate administration office:** Despite a provision for an Insolvency Administration Office (IAO), such an office does not exist until date. Currently, a few functions that the law envisages the IAO to take over are being handled by the Office of the Company Registrar (OCR). This includes registering insolvency practitioners and issuing and renewing their licenses. However, the OCR is burdened with documentation of shell companies. This makes the insolvency procedure inefficient and highly time-consuming. Thus, a company filing for restructuring or liquidation may be tied up in the proceedings for a very long time.
3) **Unavailability of trained manpower:** Currently Nepal lacks the basic pre-requisite of an effective insolvency regime, such as a commercial bench and qualified insolvency practitioners. Even though commercial benches have been established, their effectiveness cannot be guaranteed. These benches comprise of temporary judges, who are subject to frequent transfers, restricting them from building sector expertise. Furthermore, these commercial benches are not established in all courts.
4) **The requirement to gain a license to practice insolvency administration**: The requirement to gain a license for insolvency practice is very low. The Act does not recognize the necessity of experience as a qualifying factor to be an insolvency practitioner. The Act deems graduates of commerce, management accounts, or any other prescribed subjects as qualified to be an insolvency practitioner but fails to consider that the law curriculum at Nepali universities does not cover insolvency law in depth.
5) **Inefficiency due to the absence of time ceilings:** In Nepal, there is no set time ceiling within which the process of liquidation needs to be completed. Also, costs associated with liquidation like procedural costs and attorney costs are not fixed. This benefits the liquidator, who can seek fixed remuneration for a longer time.

Figure 5 Positive and negative aspects of Insolvency Act



Overall, this inefficiency in the implementation of the Insolvency Act has constrained the overall business environment of Nepal. Moreover, Nepal's overall business competitiveness on the global stage. In the Global Competitiveness Report 2019 that benchmarked the drivers of long-term competitiveness of 141 countries, Nepal ranked 95th in terms of the Insolvency regulatory framework. Similarly, for the past ten years, Nepal's score in Resolving Insolvency for the Ease of Doing Business report has remained almost constant dragging Nepal's rankings backward in the global platforms. Hence, it is crucial to revisit the implementation of the Insolvency Act by tackling the barriers to the implementation of the Act through necessary institutional and legislative reforms.

2.2.2 Parochial interests of interest groups leading to ineffective legislations

Case study 2: Foreign Investment and Technology Transfer Act 2019

The Foreign Investment and Technology Transfer Act 2019 (FITTA) intends to increase industrialization and foreign investment for the long-term growth in the national economy.

1. Why is it important to businesses?

Some of the provisions of FITTA that affect businesses in Nepal are listed below:

1. The legislation has a major focus on facilitating and regulating the involvement of foreign investment in Nepali businesses.
2. **Investment in shares in foreign currency** - Only public and listed companies established in Nepal or company obtaining approval for issuing debentures as per relevant Act can issue bonds, debentures, or securities to obtain capital.
3. **Investment through leasing airlines and machinery** - A foreign investor may invest in any aircraft, ship, machinery and equipment, construction equipment of similar other equipment.
4. **Venture Capital Funds** - An institutional foreign investor may, to invest equity in any industry, establish a venture capital fund by incorporating a company per the prevailing law. A foreign investor may only raise capital by establishing a venture capital fund if the sector to which the investment is being made is considered as an Industry under the Industry Enterprise Act. This provision restricts foreign investors from investing in local Investment companies as investment companies are not considered Industry under the Industrial Enterprise Act.
5. **Investment in Secondary Stock Market** - Foreign investors registered in the Securities Board may, through the secondary securities market, trade-in securities of an industry in which foreign investment may be made. This provision was added to the Foreign Investment Act. However, total foreign investment should not exceed a certain percent (yet to be fixed) on the paid-up capital of the company listed in the stock exchange.
6. Small and cottage enterprises, real estate business (barring construction companies), retail businesses, and primary agriculture sectors like fish farming, milk business are prohibited from receiving foreign investments. FDI is not allowed in the aforementioned enterprises primarily to protect them from the competition. However, this has circumscribed FDI in handicrafts and access to international markets. As a result, small and cottage enterprises have not been able to grow.
7. Consultancy services in management, accountancy, engineering, and legal sectors are also barred from receiving foreign investments.

8. Allows foreign businesses to open branches in Nepal which leads to growth in employment, exposure to enhanced technology and infrastructure for local companies
    - The incorporation/registration of a foreign company is done by Company Registrar's Office (OCR). The companies are registered under the provisions of the Company Act, 2006.
    - A foreign company registered in Nepal may open its branch office and carry on the concerned business or transactions or open its liaison office in Nepal. However, a foreign company registered as a liaison office shall not be entitled to do any income-earning activity in Nepal
9. Approval for foreign investment has been sped up to 7 days, making the process more efficient
    - Despite the attempt to accelerate the approval process, it remains cumbersome: after the approval of FDI by DOI followed by company registration at OCR, industry registration at DOI, and application for Permanent Account Number (PAN), the documents need to be submitted to NRB again for further screening. This provision in the legislation just detracts investors due to burdensome bureaucracy.
10. Nepali companies can issue securities in foreign capital markets which provides an opportunity for international exposure and ability to tap into foreign capital markets

2. Provisions of the legislation that foster the business environment

- Foreign investment in lease finance, introduction of venture capital fund, transaction in foreign currency are some positive aspects of this Act as it provides multiple avenues for foreign investors to start a business and build capital.
- The introduction of a one-stop service center and automatic route for important services are conducive to smooth FDI powered business development.

- The introduction of the Specialized Investment Fund Regulation ensures that there will be a legitimate regulatory body to regulate Private Equity and Venture Capital.
- The issuance of securities in foreign capital markets enables Nepali companies to tap foreign capital markets and gain exposure.

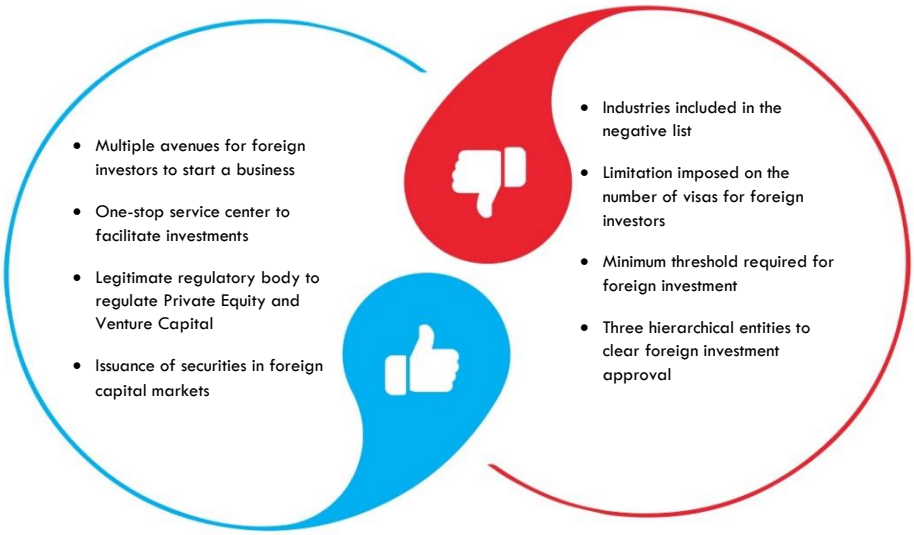
3. **Barriers to implementation of the Act**

- By limiting to only foreign financial institutions, FITTA 2075 has narrowed the scope of loan investment and it will certainly not be favorable for potential investors.
    - That being said, before this enactment, investors used to misuse the shareholder loan and use it as a tool to repatriate money out of Nepal or pay off directors
- Category of industries included in the negative list and high minimum threshold required for foreign investment does not bode well for higher Foreign Direct Investment.
- Restrictions imposed on investment in the retail business, domestic courier business, remittance business and management, accounting, engineering, and legal consultancy services contradict World Trade Organization commitments made by Nepal.
- A limitation imposed on the number of visas for foreign investors, stringent conditions for the involvement of managerial staffs contradicting the existing labor laws, and increased bureaucracy for a lot of procedures hinders the enhancement of a favorable business environment
    - Business Visa is based on the amount of investment made and there is a provision for issuing a business visa for 5 years based on DOI recommendation. But in reality, the Ministry of Immigration does not provide a 5-year visa due to the difficulty in monitoring cases of misuse of visa
- Even though FITTA lists the facilitation of land acquisitions as a service provided to companies under FDI, this has never materialized. The acquisition

of land remains the biggest obstacle for foreign investors. For example, Huaxin cement plant in Dhading.

- The creation of three hierarchical entities, namely DOI, NRB, and OCR empowered to clear foreign investment approval has made the approval procedure cumbersome.
- The government has shied away from exploring international payment systems by saying that they want to stop money exiting the country. But the implementation of such a system would tremendously help small e-commerce businesses and initiate entrepreneurial growth.
- The government's parochial approach of restricting competition and FDI for sectors in the negative list with hopes of restricting competition in said sectors is counterproductive rendering such sectors inefficient.
- Government officials and legislators alike should realize that foreign investment is not solely about money, it also promotes technology transfer. By concentrating on big investments and capital only, Nepal will miss an opportunity to acquire the best international practices.

Figure 6 Positive and negative aspects of FITTA



Overall, the formulation of legislation that restricts competition in selected sectors, shields international payments, and sets a high minimum threshold for foreign investments, makes the legislation ineffective in achieving its objective of facilitating foreign investments in Nepal.

2.2.3 Inefficient communication of the legislation

Case Study 3: Contribution-based Social Security Act 2017

The Social Security Act (SSA) was enacted to ensure the rights of the workers based on the concept of contributory social security and to provide social security to the contributors.

1. Why is it important to businesses?

The Act is important to businesses for the following reasons:

- The legislation has a major focus on businesses and industries in the formal sector. Even though it does not speak a lot about the informal sector and self-employment, the legislation tries to encourage participation from those sectors.
- The legislation talks about social security for the employees (including medical treatments and health protection schemes, maternal protection schemes, accident protection schemes, disability protection schemes, old-age protection schemes, dependent family protection schemes, unemployed assistance schemes, and other social protection schemes), and the employer's role in it.
- While the employer shall deduct 11% of the workers' basic remuneration to the total amount, they have to contribute 20% to deposit a total of 31% to the fund monthly.

1. Provisions of the legislation that foster the business environment

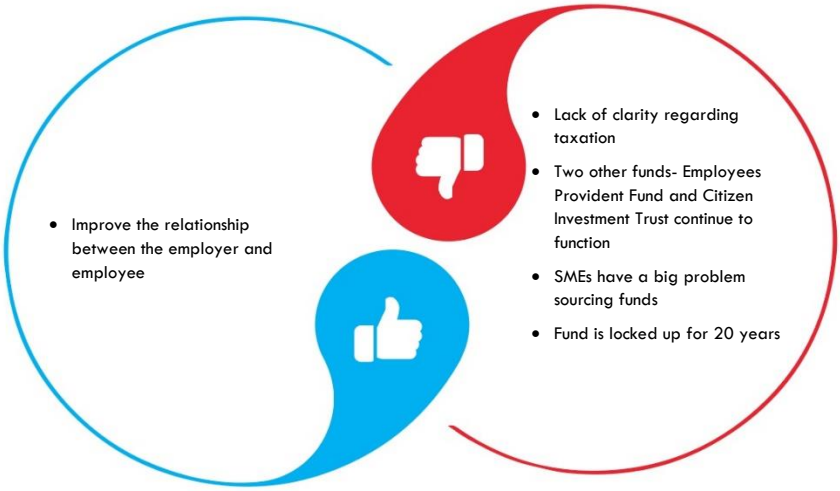
- The Act was enacted as per the social welfare concept, per which the people have rights to the welfare of various kinds as one of their fundamental rights as enshrined in the constitution. This can help improve the relationship between the employer and the employee, as it prevents the employee from becoming a liability in various instances (such as when one gets into an accident).

- As the Act can help foster the relationship between the employers and employees, it would help create an investment-friendly business environment.

2. Barriers to implementation of the Act

- Small and medium enterprises (SMEs) have a big problem sourcing funds for an expanded social security fund coverage. As per the Act, the employer shall deduct 11% of the workers' basic remuneration to the total amount and deposit the fund to a total of 31%. Thus, SMEs (especially, labor-intensive enterprises) find it difficult to manage funds with the increasing cost of doing business. While a contribution of 20% might be possible for large scale businesses, the contribution might not be sustainable for SMEs.
- Lack of clarity regarding taxation- issues regarding double taxation has also been raised, where the income tax is deducted from the taxable income of the employee and tax is also deducted in future amount, which has created hesitance for employers and employees. Similarly, lack of awareness regarding the Act, its schemes, its operations, and benefits, in general, has also hampered its fast adoption.
- Different accounts have to be maintained for different social security schemes, increasing the procedural hassle for businesses.
- Two other funds – Employees Provident Fund (EPF) and Citizen Investment Trust (CIT) - have continued to function, which has made the co-existence of Social Security Fund (SSF) with them – confusing. Until and unless, one can close down all accounts in EPF and CIT, and transfer them to SSF – it will be very difficult to transfer people to SSF. There have been mentions about allowing existing members of EPF and CIT to continue with them and having the new employers and employees to be associated with SSF. However, this needs to come in written form, and also needs proper implementation.
- Since the fund is locked up for 20 years, employers and employees might feel that they can invest the amount somewhere else with a better interest rate. Besides, they might require the fund before the mandated time of the Social Security fund. Thus, there is a need for provisions to address such issues.

Figure 7 Positive and negative aspects of SSA



To sum up, despite the grand launch of the scheme, it was widely rejected by the business community for two major reasons. First, two other funds – Employees Provident Fund (EPF) and Citizen Investment Trust (CIT) - have continued to function, which has made the co-existence of SSF with them confusing. If the framework of the coexistence or merger of these funds was developed before the launch of the fund and well-communicated, businesses would likely participate in the fund. However, rushing the launch of the fund without adequate institutional provisions has led to the failure in its implementation.

2.2.4 Lack of interagency coordination

Case study 4: Foreign Exchange Regulation Act, 2019 (1962)

The legislation is the laws governing foreign exchange transactions in Nepal. It includes provisions regarding ownership, transfer, and disclosures regarding foreign exchange and related transactions. It is an Act made to regulate foreign exchange related transactions.

1. **Why is it important to businesses?**
   - The legislation touches upon aspects of imports and exports of goods and their payments. It also discusses the laws regarding investments made by a Nepali citizen in a foreign nation. Provisions regarding foreign investors and disclosures required by them are also covered in the legislation. Any payment

obligations to a person residing outside Nepal, for any imported goods and services require approval from the NRB. Likewise, in case of receipt of any foreign exchange, disclosure to the Customs Office and NRB is required. Necessary documents are required to be submitted to the regulatory authorities.

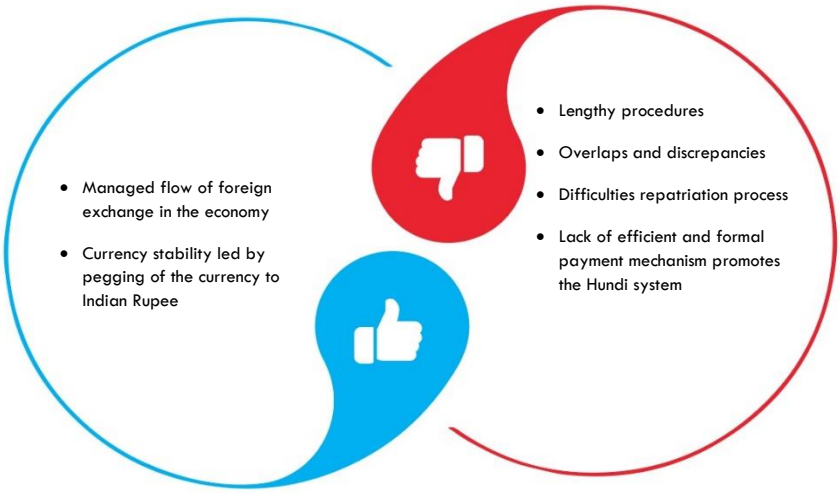
- The exporters are allowed to maintain foreign currency accounts at commercial banks, with interest rates controlled by the central bank.
- The legislation also lays down provisions regarding loan transactions by foreign lenders. An approval from the NRB must be obtained under the Foreign Exchange (Regulation) Act 1962 for any loan transactions by foreign lenders. Repatriation of investment is only allowed in the form of an exchangeable foreign currency, which is regulated by the Nepal Rastra Bank. Approval of Nepal Rastra Bank is currently required for each transfer.
- The Nepal stock exchange does not allow foreign investors to own or trade any publicly-traded companies on the exchange. Stock trading is available only for the citizens of Nepal. Nepali citizens are not permitted to invest outside of Nepal. However, exceptions can be granted on a case by case basis. For foreign investors who have permission to invest in securities in Nepal, repatriation can only be done under the prevailing law, with necessary disclosure to the Nepal Rastra Bank.

2. **Provisions of the legislation that foster the business environment**
   - **Managed flow of foreign exchange in the economy:** The restrictive foreign exchange policy ensures that there is a balanced circulation of foreign exchange. It establishes that there is no abuse of foreign exchange and inflows and outflows of foreign currency are balanced. The trend in the economy shows that in case of a flexible policy, the outflow of foreign exchange would be greater than the inflow.
   - **Pegging of the currency to Indian Rupee:** The Nepali currency is pegged to the Indian Rupee (INR) at a rate of NPR 1.6 to INR 1. This has resulted in currency stability despite the Nepali rupee losing its value. This helps foster business, trade, and other economic activities. Nepal currently lacks adequate

infrastructure for a free-float and the pegged currency ensures investor's confidence.

3. **Barriers to implementation of the Act**
   - **Lengthy procedure:** The Act requires the parties to make disclosures to the NRB, for any foreign exchange transactions. This requires administrative approvals and lengthy clearance processes which slows down the transaction of foreign exchange.
   - **Overlaps and discrepancies:** There are noticeable discrepancies between the government's legislation regarding foreign exchange repatriation. For example, even though FITTA provides that NRB has to only be notified regarding the repatriation once the approving authority has approved, however, under FERA and NRB Circular, NRB is not just a notifying body, it is an approving authority of the repatriation. Thus, there is no clarity on whether notification in itself would suffice until the provisions of FERA and NRB Circular are amended.
   - **The process of repatriation is difficult:** It is extremely difficult and time-consuming for foreign companies to take back the profits that they have earned. This discourages foreign direct investment and foreign institutional investors from entering into Nepal.
   - **Lack of efficient and formal payment mechanism promotes the Hundi system:** The Hundi system is an informal money transfer system that uses closed networks to transfer cash without actually doing a cross-border transaction. Due to its cost-effectiveness, flexibility, and more importantly no regulatory obligations, it is a popular system that is further encouraged due to the strict foreign exchange regulations. Thus, people, especially migrant workers prefer sending money to their families back home through this informal system despite the risk it curtails. This in return reduces the remittance income for the government, hampering economic growth.

Figure 8 Positive and negative aspects of FERA



Overall, the weak interagency coordination in the implementation of FERA has led to confusion among businesspersons and investors decreasing the efficiency of the legislation.

3. Enhancing the efficiency of the legislature

Eliminating the barriers that undermine the efficiency of the legislature is crucial to maintaining a stable and progressive regulatory framework. Without a dependable regulatory framework, it is almost impossible to allure investments into the country. Hence, initiatives need to be taken to strengthen the capacity of the legislature in smoothening the process of legislation formulation and implementation. Some of the suggested steps towards achieving this goal can be as follows:

- The Parliamentary Secretariat should function as an autonomous and non-partisan body and timely perform its roles and responsibilities regarding the effective functioning of the Parliament.
- The parliamentarians should be held accountable for performing their roles as public representatives in the formation of legislation. This includes being present in the parliamentary, providing timely inputs into the bills tabled at the parliament,

and not disrupting parliamentary proceedings. This should include penalizing the parliamentarians for their deeds and unaccountability.

- The training to the parliamentarians and members of the parliamentary committees especially at the subnational level should be rigorous. They should be well-trained about their roles and responsibilities as lawmakers of the country.
- The implementation plan of legislation should be well mapped before its formulation such that any weak links such as contextual barriers to implementing the legislation, unclear communication of the desired outcomes of the legislation, and weak interagency coordination should be addressed beforehand.

ANNEX 1: Status of bills presented in Federal Parliament

SN	Legislation	Proposed for	Status
Directly related to economy			
1	Competition Promotion and Market Protection (First Amendment) Act, 2076	Amendment	Registered
2	Export-Import (Regulation) Act, 2076	Amendment	Registered
3	Industrial Enterprise Development Foundation (First Amendment) Act, 2076	Amendment	Passed-Authenticated
4	Industrial Enterprise Act, 2076	Enactment	Passed-Authenticated
5	Public-Private Partnership and Investment Act, 2075	Enactment	Passed-Authenticated
6	Foreign Investment and Technology Transfer Act, 2075	Amendment	Passed-Authenticated
7	Special Economic Zone (First Amendment) Act, 2075	Amendment	Passed-Authenticated
8	The Consumer Protection Act, 2075	Enactment	Passed-Authenticated
9	Safeguards, Anti-dumping and Countervailing Act, 2076	Enactment	Passed-Authenticated
10	Social Security Act, 2075	Amendment	Passed-Authenticated
Indirectly related to economy			
1	Animal Health and Animal Services Council Act, 2076	Original	Registered
2	Seed (Second Amendment) Act, 2075	Amendment	In HoR
3	Plant Protection (First Amendment) Act, 2075	Amendment	In HoR
4	IT Management Act 2075	Original	In HoR
5	Insurance Act 2075	Original	In HoR
6	Land (Eight Amendment) Act, 2076	Amendment	Passed-Authenticated
7	Forest Act, 2076	Amendment	Passed-Authenticated

8	Environmental Protection Act, 2076	Amendment	Passed-Authenticated
9	Pesticides Management Act, 2076	Original	Passed-Authenticated
10	Land Use Act, 2076	Original	Passed-Authenticated
11	The Right to Employment Act, 2075	Original	Passed-Authenticated
12	The Right to Food and Food Sovereignty Act, 2075	Original	Passed-Authenticated
13	Bank and Financial Institutions Act 2073	Amendment	Registered

ANNEX 2: Status of bills presented in the State Parliament of Province 1

SN	Legislation	Status
Directly related to economy		
1	Province Number 1, Industrial Enterprise Act, 2076	Registered
2	Bill made for making registration, renewal, and other related arrangements at the provincial level, 2076	Under Discussion
3	Bill to make provision for public-private partnership and investment authority, 2076	Passed-Authenticated
Indirectly related to economy		
1	Province Number 1 Province Forests Act, 2076	Registered
2	Province Number 1 Province Environment Protection Act, 2076	Under Discussion
3	Bill made to make arrangements for province transport and transportation, 2076	Passed-Authenticated
4	Bill to make arrangements for province cooperatives, 2075	Passed-Authenticated
5	Bill to make provision for electricity, 2075	Passed-Authenticated
6	Bill made to make provision for building construction, 2075	Passed-Authenticated
7	Bill to make arrangements for province tourism, 2075	Passed-Authenticated
9	Bill to implement the proposal of the province government regarding finance, 2076	Passed-Authenticated
10	Bill made to make arrangements for the development of large areas, 2075	Passed-Authenticated
11	Bill to make provision for irrigation, 2075	Passed-Authenticated
12	Bill made to make arrangements for levying and collecting tax and non-tax revenue of the province, 2075	Passed-Authenticated
13	Bill made to make arrangements for province radio, F.M., and television broadcasting, 2075	Passed-Authenticated

ANNEX 3: Status of bills presented in the State Parliament of Province 2

SN	Legislation	Status
Indirectly related to economy		
1	Province Financial Transfer Management Act, 2075	Passed-Authenticated
2	Province Financial Act, 2075	Passed-Authenticated
3	Province Financial Procedure Act, 2074	Passed-Authenticated

ANNEX 4: Status of bills presented in the State Parliament of Bagmati Province

SN	Legislation	Status
Directly related to economy		
1	Agribusiness Promotion Act, 2076	Passed/Authenticated
Indirectly related to economy		
1	Transport and Transportation Bill	
2	Province Financial Act, 2076	Passed/Authenticated
3	Province Appropriation Act, 2076	Passed/Authenticated
4	Province Financial (First Amendment) Act, 2076	Passed/Authenticated
5	Province Seed Act, 2076	Passed/Authenticated
6	Province Tax and Non-Tax Revenue (First Amendment) Act, 2076	Passed/Authenticated
7	Province Cooperatives Act, 2076	Passed/Authenticated
9	Province Media Management Act, 2075	Passed/Authenticated
10	Province Institution Registration Act, 2075	
11	Province Financial Transfer Act, 2075	Passed/Authenticated
12	Province Financial Procedure Act, 2074	Passed/Authenticated

ANNEX 5: Status of bills presented in the State Parliament of Gandaki Province

SN	Legislation	Status
Directly related to economy		
1	Industrial Enterprise Act	Passed/Authenticated
2	Province Industrial Enterprise Act, 2075	Passed/Authenticated
Indirectly related to economy		
1	Province Financial Procedure (First Amendment) Bill, 2075	Passed/Authenticated
2	Bill to make provision for levying and collecting province tax and non-tax revenue, 2075	Passed/Authenticated
3	Bill to make provision for tobacco products (control and regulation)	Passed/Authenticated
6	Bill made to make arrangements for province Transport and Transportation, 2075	Passed/Authenticated
7	Province Financial Procedure (First Amendment) Bill, 2075	Passed/Authenticated
9	Bill to make provision for levying and collecting province tax and non-tax revenue, 2075	Passed/Authenticated
10	Bill to make provision for tobacco products (control and regulation)	Passed/Authenticated
11	Bill made to make arrangements for province Transport and Transportation, 2075	Passed/Authenticated

ANNEX 6: Status of bills presented in the State Parliament of Lumbini Province

SN	Legislation	Status
Directly related to economy		
1	Province Number 5, Industrial Enterprise Act, 2075	Passed/Authenticated
2	Private Firm Registration Act, 2076	Passed/Authenticated
3	Partnership Act, 2076	Passed/Authenticated
Indirectly related to economy		
1	Road Transport, Transportation and Transit Act, 2076	Passed/Authenticated
2	Province Financial Act, 2076	Passed/Authenticated
3	Province Number 5, Cooperatives Act, 2076	Passed/Authenticated
4	Province Number 5, Province Tourism Act, 2076	Passed/Authenticated
5	Province Number 5, Associations Registration Act, 2075	Passed/Authenticated
6	Province Number 5 Fertilizer Act, 2075	Passed/Authenticated
7	Province Number 5, Animal Slaughterhouse and Meat Inspection Act, 2075	Passed/Authenticated
8	Province Number 5, Animal Health and Animal Service Act, 2075	Passed/Authenticated
9	Province Number 5, Seed Act, 2075	Passed/Authenticated
10	Province Number 5, Province Building Act, 2075	Passed/Authenticated
11	Province Number 5, Grain Products Act, 2075	Passed/Authenticated
12	Province Number 5, Province Financial Management Act, 2075	Passed/Authenticated
13	Province Number 5, Act relating to Tax and Non-Tax Revenue, 2075	Passed/Authenticated

ANNEX 7: Status of bills presented in the State Parliament of Karnali Province

SN	Legislation	Status
Directly related to economy		
1	Province Industrial Enterprise Act, 2077	Registered
2	Province Trade and Business (Registration and Operations) Act, 2076	Registered
3	Karnali Province Consumer Protection Act, 2075	In Committee
4	Karnali Province Public-Private Partnership Act, 2075	In Committee
Indirectly related to economy		
1	Karnali Province Environmental Protection Act, 2076	Passed/Authenticated
2	Karnali Province Forest Act, 2076	Passed/Authenticated
3	Karnali Province Tourism Act, 2076	Passed/Authenticated
4	Bill made to make arrangements for levying and collecting tax and non-tax revenue in Karnali	Passed/Authenticated
5	Karnali Province Cooperative Bill, 2075	Passed/Authenticated
6	Food Production, Rights and Sovereignty Act, 2075	Passed/Authenticated
7	Karnali Province Organic Agriculture Act, 2076	Passed/Authenticated
8	Karnali Province Financial Procedure (First Amendment) Act, 2076	Passed/Authenticated
9	Karnali Province Financial Act, 2076	Passed/Authenticated

ANNEX 8: Status of bills presented in the State Parliament of Sudurpaschim Province

SN	Legislation	Status
Directly related to economy		
1	Private Firm Registration Act, 2076	Passed/Authenticated
2	Partnership Firm Registration Act, 2076	Passed/Authenticated
3	Sudurpaschim Provincial Industrial Enterprise Act 2075	Passed/Authenticated
Indirectly related to economy		
1	Sudurpaschim Province's Agriculture and Livestock Enterprise Promotion Act, 2076	Passed/Authenticated
2	Sudurpaschim Province Cooperatives Act, 2075	Passed/Authenticated
3	Sudurpaschim Province Environment Protection Act, 2075	Passed/Authenticated
4	Financial Act, 2076	Passed/Authenticated
5	Appropriation Act, 2076	Passed/Authenticated
6	Act relating to tax and non-tax revenue, 2075	Passed/Authenticated
7	Act relating to province radio, F.M., and television broadcasting, 2076	In process

ANNEX 9: Insolvency Act

The Insolvency Act 2063 was enacted to provide for administration and proceedings of companies, which are insolvent or going to be insolvent i.e. being unable to pay the debt to the creditors or facing financial difficulties. The legislation also covers provisions regarding the restructuring of such companies. It addresses the issues about corporate insolvency, its procedure, and mechanisms to supervise the process. It was formulated post the Insolvency Ordinance of 2005 and the Act itself was enacted by the Parliament on 20 November 2006 (4 Mangsir 2063). It was Act number 20 for the year 2063 (2006). No amendments have been made to this Act yet.

What does it cover?

The Act covers the following provisions:

- **Naming and definition** of what entails insolvency, liquidation, and restructuring.
- **Insolvency proceedings**- This includes the requirement of a court order, application made for the proceedings, conditions for insolvency, and power to issue an interim order by the court. It also mentions that once an application is made to the court for insolvency proceedings, it cannot be withdrawn.
- **Inquiry into insolvency proceedings**- This section entails provisions regarding the power of the court to extend the period of insolvency proceedings, report to be made by the director, power to raise loans by the inquiry officer and transactions to be suspended. It states that the board of directors of the company would carry out the management of the company during the inquiry period under the supervision of the inquiry officer. Cutting down of essential services like electricity, gas, etc. are prohibited. A meeting of creditors should be convened by the inquiry officer to discuss his report.
- **Restructuring scheme of the company**- Preparation of a restructuring program is required by the restructuring manager. The restructuring manager is also required to call a meeting of the creditors, who should submit their claims within 15 days. The legislation requires the manager to prepare a report. In case of

objection by the creditor to the restructuring program, the Act mentions necessary provisions for the same. Also, the Act highlights that no restructuring program approved by the court would affect secured creditors, lessor, or owner of a property. The day to day operations is to be handled by the restructuring manager. Provisions regarding implementation, alteration, and termination of the restructuring program are also covered.

- **Liquidation of the company**- The Court would appoint a liquidator, who is also responsible for exercising powers of a director concerning the management of the company. The services of employees are to be terminated. Based on facts, if the liquidator believes that a restructuring program can be adopted, an application would be made for the same. The legislation also covers the functions, duties, and powers of the liquidator. It allows the liquidator to form a committee of no more than 5 creditors for assistance. The liquidator would also be required to cancel the registration of the company.
- **Claims of creditors and mode of payment**: The chapter covers provisions regarding claims submitted by creditors, claims of interest, contingent liability, immature claims, claims involving foreign exchange, adjustment of debt, shareholder claims, and deemed to be creditors. It highlights the order of settlement of liabilities, with wages and remuneration following all liquidating expenses.
- **Void Transactions:** Provisions regarding transactions that shall become void are included in this chapter. It also mentions laws concerning defending voidable transactions and the power of the court regarding such transactions.
- **Insolvency practice, and regulation and administration thereof**: The legislation prohibits a person to carry on an insolvency practice without a license. Eligibility and minimum qualifications of a person who wishes to obtain a license are mentioned. The Act allows the Government of Nepal to establish an Insolvency Administration Office to administer and handle insolvency practices and practitioners. It discusses the remuneration of officials appointed under the Act and provision for opening a separate account to conduct insolvency proceedings of every company.

- **Miscellaneous**: This chapter covers various offenses and punishments, recovery of expenses and compensation, the power to frame rules and manuals, and the effect of inoperativeness of Insolvency Ordinance, 2062 (2005).

Which are the governing bodies for implementing the legislation?

The law is currently governed by the Ministry of Industry, Commerce, and Supplies. The Office of the Company Registrar handles matters regarding insolvency currently, despite the Act making a separate provision for an Insolvency Administration Office.

The authorities covered by the legislation include the following:

- Government of Nepal - Ministry of Industry Commerce and Supplies
- Supreme Court: For any approvals required during the insolvency, restructuring, and liquidating proceedings
- Appellate Court: For any applications made by dissatisfied creditors
- Nepal Rastra Bank
- Insolvency Administration Office: For handling matters related to insolvency practice and licenses to practitioners.

ANNEX 10: Foreign Investment and Technology Transfer Act

It aims to spark economic growth by reforming the existing legal framework of foreign investment in Nepal to attract more foreign investments. It replaced the old FITTA 1992. The legislation received presidential assent on 27 March 2019. It was Act No. 34 of the year 2075 (2018/2019). No amendments have been made to FITTA 2075 yet.

What does it cover?

The legislation covers the following cardinal issues:

- **Defines what entails foreign investment and technology transfer -** The FITTA considers the following as foreign investment:
  - Investment in shares of industry
  - Investment through the purchase of shares or asset
  - Investment through the lease of airlines, ships, machinery, and equipment
  - Technology Transfer i.e. licensing of foreign intellectual property, franchising, management, advisory, and market services
  - Investment in capital investment funds
  - Investment in secondary stock market
  - Investment by the issue of securities in foreign stock markets
  - Re-investment of profits
- **Lists the investment approving bodies** – The Act requires that foreign investment and technology transfer should be approved by the approving authority. It provides for three different approving authorities. They are:
  - Department of Industry (DOI) as approving authority for foreign investments of under NPR 5 billion (~USD 53 million) and the Investment Promotion Board (IIPB) will approve investments over NPR 5 billion but under NPR 6 billion.
  - Investment Board of Nepal (IBN) as approving authority for foreign investments above NPR 6 billion.

- There is an overlap between the two boards with IIPB's nominal significance and narrow margin for approvals. IIPB could have entirely been removed and replaced by the IBN to reduce bureaucracy.

Table 1 Approving authorities based on the type of investment

S.N.	Type of investment	Approving Authority
1.	Share investment	DOI, NRB
2.	Lease finance	DOI, NRB
3.	Venture Capital fund	Securities Board of Nepal (the SEBON), DOI, NRB
4.	Issuance of securities in foreign exchange	SEBON, NRB
5.	Foreign loan from a foreign financial institution	Ministry of Industry, Commerce and Supply, NRB
6.	Technology Transfer	DOI, NRB

- **Defines investment limits:** FITTA provides that the maximum limit of the amount and proportion of foreign investment is not to be determined, except in the following two cases:
  - The maximum limit of foreign investment in the equity of the service industry may be prescribed so that foreign investment is not less than the commitment made by Nepal at the time of obtaining membership of the World Trade Organization.
  - The maximum limit of foreign investment in securities transactions may also be prescribed.
  - There is a minimum investment threshold in foreign investment, which is NPR 50 million per investor.
- **Specifications and guidelines for investment timeline** - The approval is automatically deemed revoked without notification if:
  - The investor does not start bringing in the investment amount without reasonable cause within 2 years from the date of approval
  - The shares of the investment are transferred to Nepalese investor

- Revocation of industry registration or dissolution of the company

Table 2 Tentative timeline to approve investment

STEPS	APPROXIMATE TIME TAKEN
FDI approval	7 days
Company registration	1 week
Tax Registration	1-2 days
Industry Registration	1 and a half week
NRB Approval	1 month
Total	3 months

- **Foreign Investors borrowing money from overseas and foreign loan investment**- Companies with foreign investment can only borrow from local sources and foreign banks and financial institutions. There is a lack of clarity as to whether a foreign loan also covers shareholder loans. It also lacks clarity on whether industries without foreign investment can take foreign loans. In the case of foreign borrowing, the interest rate of such foreign currency borrowing should not exceed 6 Months Libor (London interbank offered rate) plus 5.5% that includes all applicable fees, as per NRB directives.
- **Repatriation of earnings or sales** - The FITTA allows investors to repatriate dividends, profits, earnings, proceeds of the sale of shares and, proceeds of liquidation and amounts recovered from legal proceedings, which were allowed but not clear in previous FITTA. The investor needs to first apply to the DOI of the Investment Board for approval. Only if it seems that the foreign investor has fulfilled all the conditions, then the approval to repatriate can be granted after which the investor can apply to NRB for final approval. Foreign investors can repatriate the amount in the same currency of investment or other convertible foreign currency with the approval of NRB. (Approval is required from the approving authority and the NRB for each repatriation.)

- **Obligations imposed on investors**- Investors have the obligations to:

    - Notify change in ownership of holding company's shareholders and pay taxes applicable on change in ownership
    - Bring investment amount in the prescribed time
    - Comply with the Act, regulations, other laws, or any conditions imposed when providing approval
    - Update the DOI on the progress of the company/project. However, many companies do not adhere to this and DOI does not have the manpower to monitor all companies.
- **Criteria for revoking investment approval**- The foreign investment approval granted under FITTA may be revoked if:
    - The investor does not invest within the prescribed time without reasonable justification. However, this regulation is ambiguous, and approvals are usually extended in actuality
    - The investor breaches the Act, regulations, or any conditions imposed during approval after fulfilling procedures set out in the regulations
- **Availability of business and work visas**- Residential visas are available to a foreign investor and family member of such person as well as the authorized representative of the foreign investor and his/her family members. Provisions for business/work visas are available to a maximum of two people in case the amount exceeds the prescribed investment amount. Non-business visas, i.e. granted upon obtaining a work permit, are only available for high-skilled and technical workers.

Which are the governing bodies for implementing the legislation?

The Ministry of Industry, Commerce, and Supplies is the primary governing agency of FITTA. Other authorities that are encompassed by the legislation are:

- Nepal Rastra Bank: To approve the foreign investment
- Department of Industry: Oversees the investment in different industrial sectors and acts as the starting point
- Office of Company Registrar (OCR): Reference office for registering a foreign company

- Investment Board Nepal: To approve foreign investment and facilitate foreign investment
- Securities Board of Nepal: To overlook and approve the investment in venture capital funds
- Industry and Investment Promotion Board: To approve investments over NPR 5 billion but under NPR 6 billion

ANNEX 11: Social Security Act

The Act was enacted by the Parliament on 24 July 2017 (9 Shrawan 2074) and became effective from 13 August 2017 (29 Shrawan 2074) after the assent by the Rt Hon President of Nepal. The Act was amended once by "Acts to amend some Nepal acts, 2018 (2075)" on 3 March 2019 (19 Falgun 2075).

What does it cover?

In the preliminary section (paragraph-1), the naming and definitions are covered. In paragraph-2, various arrangements regarding social security are covered. Some arrangements are given below:

- **No social security without contribution**- Only those who contribute to the social security fund, will get social security.
- **Contribution to the fund**- Listed employers shall regularly deposit contributions as specified, to the fund monthly (except where otherwise specified or where full month's contribution is not required).
- **Listing of the employer**- Existing employers need to be listed in the fund.
- Ways in which employees in **the information sector and people in self-employment can become a part of the Social Security Act.**
- Selection of social security schemes for employees in the informal sector and people in self-employment.
- **Contribution's rate-** It will be based on the decisions made by the Nepal government.
- **Arrangements regarding contribution when salaries are not received-** if the employee is not able to deposit his/her contribution due to any reasons, the registered employer must deposit his contributions for a maximum of 3 months, which can be deducted from the wages and services given to the employee.
- **Collection of the contribution of the amount-** If the amount is not given by the registered employer, the Fund can collect the contribution amount from the respective employer with 10% interest. If this is due to reasons outside the control of the employer, the employer can apply for an extension of 30 days.

Other actions can also be taken against the employer (as listed) if the contribution is not made.

- **Social Security Schemes to be operated-** It includes medical treatments and health protection schemes, maternal protection schemes, accident protection schemes, disability protection schemes, old-age protection schemes, dependent family protection schemes, unemployed assistance schemes, and other social protection schemes. Similarly, the fund can run different social security programs.
- **Different accounts to be maintained for different types of social security schemes.**
- Arrangements regarding **receiving the services, the termination of services, the collection, the instructions that the fund can give, and other arrangements that can be made by the Fund.**
- **Arrangements regarding registration in the fund** - Some arrangements under SSA are: information to be published in gazette regarding the registration, employees to be listed for registration in the fund, those who are presently engaged in government services or those who earn government wages, arrangements regarding registrations, and its documentation.
- **The establishment of the social security fund**- The social security fund is established for the operation and management of the social security of the employees from the amount collected as the contribution from employee and employer. The **fund will be an autonomous and organized entity**. Similarly, other arrangements **regarding the fund, its operations, rights, and responsibilities** are also stated. Arrangements regarding the investment of the fund's amount Arrangements regarding the **fund's accounts, auditing, internal control mechanisms, and evaluation.**

Which are the governing bodies for implementing the legislation?

The Ministry of Labor, Employment, and Social Security is the governing body for implementing the legislation. Other authorities covered by the legislation include:

- Nepal Rastra Bank (to look after the regulation department)

- Ministry of Finance (to look after the budget and programs)
- Ministry of Law, Justice and Parliamentary Affairs
- National Planning Commission (to look after the social sector)
- Ministry of Cooperatives and Poverty Alleviation
- Federation of Trade Unions

Various members from these authorities are members of the board of directors. They are involved in the operation, supervision, and management of work that is needed to be done from the fund's side.

ANNEX 12: Foreign Exchange Regulation Act

The Act was enacted by the Parliament on 29 June 1962 (15 Asadh 2019). It was Act number 5 of the year. There have been two amendments to the Act. The first amendment and second amendment were made on 18 October 1987 (1 Kartik 2044) and 7 August 2002 (22 Shrawan 2059) respectively. There have been few other amending acts that have contributed to the Foreign Exchange Act 2019 (1962). They are as follows:

- Some Nepal Acts Amendment, Repeal and Continuance Through Rearrangements Act 2019 (1963)
- Judicial Administration Reform (Fourth Amendment) Act, 2043 (1986)
- Finance Related Some Nepal Acts Amendment Act, 2047 (1990)
- Some Nepal Acts Amendment Act, 2048 (1992)
- Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2009)

What does it cover?

The Act covers the following issues:

- Naming and definitions
- The requirement of license from Nepal Rastra Bank (NRB) to carry on foreign exchange transactions. The license can be obtained by making an application.
- Power of bank to take action.
- Procedure for carrying on foreign exchange transaction- A person is required to obtain permission from the bank to carry on foreign exchange transaction, at the exchange rate specified by the bank
- Payment for sale of goods and services to foreigners - The person or the business accepting the payment, shall take the payment in foreign currency.
- Restriction of import or export of certain currency and bullion
- Power of the Government of Nepal (GoN) to obtain foreign exchange- In the case of a foreign exchange crisis, the government can order the citizens to produce and transfer the foreign exchange to the government.
- Duty of importers

- Payment of the price for the exported goods
- To receive payment of the value of exported goods- The exporter is required to make a declaration to the customs officer that he shall receive in foreign exchange.
- Acts not to be done by the exporter
- Restriction on making or receiving payment- A resident of Nepal is restricted from making any kind of payment to any person or on behalf of any person residing outside Nepal.
- Restriction on export and transmission of securities- The Act prohibits any person to export or transmit any securities to any place or person residing outside Nepal.
- Restriction on investment
- Provisions relating to lending and borrowing of a loan in foreign exchange- No person shall lend or borrow a loan in foreign exchange unless stated otherwise by the bank.
- Provisions relating to repatriation, investment, and transfer of right in foreign exchange
- Designation of investigating officer- The government of Nepal may designate an investigating officer to investigate offenses under the Act. The investigating officer is also required to submit a report of the actions done by him.
- The process to search auspicious person, motor vehicle, and building.
- Power to arrest or hold in detention.
- Power of bank to give direction, frame by-law, or issue order or notice.
- Permission of the bank is required to open an account- Any citizen of Nepal residing in Nepal is required to obtain permission from the Bank to open an account with a bank in a foreign country.
- Punishments in case of an offense- In case of an offense, fines for different offenses are laid out in this Act.
- The Act also repeals the Foreign Exchange Conversion Control Act, 2017, canceling all licenses issued under it.

Which are the governing bodies for implementing the legislation?

The law is currently governed by the central bank i.e. Nepal Rastra Bank. The authorities covered by the legislation include the following-

- Government of Nepal- Ministry of Finance
- Nepal Rastra Bank
- Department of Customs - The Act requires a person to make a declaration to the customs officer, in case of receipt of payment for the export of goods.
- Village Development Municipality

REFERENCES

[1] KC Deepak (2020). Parliament Functioning More Like Extension of Government, Rather Than Sovereign Entity, Experts Say. The Kathmandu Post. Available at: https://kathmandupost.com/politics/2020/03/16/parliament-functioning-more-like-extension-of-government-rather-than-sovereign-entity-experts-say

[2] The Kathmandu Post (2020). Cabinet Recommends That President Bhandari Prorogue the House. The Kathmandu Post. Available at: https://tkpo.st/3gnu989

[3] People's review (2020). MPs' Absence Put Off Parliament Session. People's News Monitoring Service. Available at: https://www.peoplesreview.com.np/2020/03/01/mps-absence-put-off-parliament-session/

[4] Gimire S. (2019). House Stalled Second Time In Less Than A Week. My Republica. Available at: https://myrepublica.nagariknetwork.com/news/house-stalled-second-time-in-less-than-a-week/

[5] Republica (2020). House Meeting Resumes As Main Opposition Nepali Congress Withdraws Its Protest. My Republica. Available at: https://myrepublica.nagariknetwork.com/news/house-meeting-resumes-as-main-opposition-nepali-congress-withdraws-its-protest/

[6] Hughes and Carlson (2015). How Party Polarization Makes The Legislative Process Even Slower When Government Is Divided. LSE US Center. Available at: https://bit.ly/1EhrEsO

NEF PROFILE

Nepal Economic Forum (NEF) is a premier private sector-led economic policy and research organisation that seeks to redefine the economic development discourse in Nepal. Established in 2009 as a not-for-profit organisation under the beed (www.beed.global) umbrella, NEF is a thought centre that strives to redefine the economic development discourse in Nepal by strengthening the Nepali economy through various activities to promote an efficient and inclusive private sector. NEF has been featured in the list of Top Think Tanks in Southeast Asia and the Pacific in the Global Go To Think Tank Index Reports 2016 through 2019.

NEF BROADLY WORKS UNDER THE FOLLOWING

BPRC

Business Policy Research Center (BPRC) consolidates NEF's activities into a hub that takes a holistic approach to the issues; generates dialogue between the public and private sectors on economic development concerns, and acts as a platform for information dissemination. To bridge the gap in credible research and leverage beed's engagement with the private sector, BPRC has been working to generate awareness and promote public discourse on key issues of the Nepali economy. NEF generates three products under BPRC:

nefport - a quarterly economic analysis publication
neftake - periodic blogs that covers wide range of issues
neftalk - a platform for policy discourse

Himalayan Circular Economy Forum (HiCEF) is one of the critical initiatives that NEF has taken as a functional outcome of the Himalayan Consensus Summit that NEF functioned as secretariat from 2014 to 2019. HiCEF brings forth key issues for public discourse to mainstream alternative development paradigms. Through HiCEF, NEF intends to explore the concept of a circular economy and contribute in paving a path towards sustainable businesses and societies.

Renewable Energy (RE) Center aims to be the premier platform for mainstreaming renewable energy issues by engaging multiple stakeholders to articulate discourse that will shape national-level energy policies. The RE Center has already conducted a dialogue series in this regard, bringing various stakeholders under the same roof to discuss the burning issues of this sector.

Startup Policy Incubation Center (Start-PIC) emerged because the regulatory environment in which the startup ecosystem operates has not evolved in the country. The stakeholders in the ecosystem face business uncertainty due to redundant policies. Start-PIC aims to review the prevailing laws in Nepal, recommend necessary amendments, and incubate startup policies that will foster entrepreneurship spirit and startup ecosystem in the country.

Through its **devCon** division, NEF operates in the domain of Development Consulting in conjunction with beed management. It works with a variety of bilateral, multilateral, national, and international institutions in the areas of policy research, economic analysis, value chain analysis, enterprise development, sectoral studies, and public-private dialogue.

We are striving to ensure financial sustainability for NEF to complement the support it currently receives from beed management and the Open Society Foundations. If you are interested to support NEF, please do get in touch with info@nepaleconomicforum.org

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