

## Implementation of Labor Rules 2075 (2018)

### Introduction

On May 27, 2018, the Government of Nepal enacted the new Labor Rules 2075 (2018) (“Labor Rules”), which are formulated under the new Labor Act 2074 (2017) (“Labor Act”). The Labor Rules came into effect immediately. The Labor Rules repealed the previous Labor Rules 2050 (1993), which were in force for over two decades. The Labor Rules provide additional guidance on various provisions in the Labor Act.

### Summary of Major Provisions

Please refer below for a summary of the Labor Rules’ major provisions:

- **Labor Permit and Work Permit for Foreign Nationals:** The Labor Rules prescribe procedures to obtain Labor Permit and Work Permit from the Department of Labor to hire foreign national and to be engaged in work by foreign national. Depending on the foreign national’s skills, the Labor Permit or Work Permit may be valid for a maximum period of 3 to 5 years and may be renewed for up to two years in special cases after obtaining approval from the Ministry of Labor, Employment and Social Security (“Ministry”). Generally, foreign nationals may consist of up to only five percent of the total number of employees in an enterprise. This provision may likely to be seen as a barrier for technology companies, infrastructure development companies, specialized manufacturing companies, etc. Senior-level employees of an enterprise established under foreign investment laws and technical manpower who is in Nepal for three months or less may obtain a Labor Permit from the Department of Labor without a formal application.
- **Payment through Banking Channels:** The Ministry may require certain employers to pay employees only through banks or financial institutions.
- **Provident Fund and Gratuity:** The Labor Rules prescribes procedures regarding depositing provident fund and gratuity and also gives more flexibility to employers on depositing provident fund and gratuity until a fund is established under the Contribution-Based Social Security Act 2074 (2017).
- **Housing Fund Expenses:** An enterprise no longer needs to allocate amount for employee housing. Any unused amount in a housing fund established under the previous Labor Act 2048 (1992) may be used to arrange housing or spend it to the benefit of employees as per the decision of the Labor Relations Committee.
- **Distribution of Service Fee:** The Labor Rules prescribes a fair distribution of the service fees collected from consumers by establishments such as hotels, restaurants, etc. among workers, management, and employers’ and workers’ unions.
- **Workplace Safety:** An employer must prepare and implement a Health and Safety Policy addressing, among other issues, precautionary measures that must be taken when operating machinery, equipment and chemical substances. An enterprise with 20 or more employees must also establish a Health and Safety Committee, which includes employees’ representatives, to provide advice on workplace safety issues.
- **Workers’ Compensation:** An employee who is disabled due to a workplace accident is entitled to compensation based on his/her percentage of disability. The procedures for assessment of disability are prescribed.
- **Special Requirements for Large Employers:** Employers with 50 or more employees must arrange for break room and canteen for employees. Employers with 50 or more female employees must also arrange for a child care center either by itself or jointly with another employer.
- **Labor Suppliers:** The Labor Rules impose several obligations on third-party labor suppliers. For example, labor suppliers must obtain a license from the Ministry. They must also renew their license annually and submit yearly filings at the Ministry.

The following chart explains in further detail the Labor Act’s major provisions and the Labor Rules’ clarifications in further detail.

## Highlight of Major Provisions Introduced by Labor Rules

Headings	Labor Act's Provisions	Guidance by Labor Rules
<b>Regular Employment</b>	<p>The five types of employments are:</p> <ol style="list-style-type: none"> <li>i. Regular Employment</li> <li>ii. Work-Based Employment</li> <li>iii. Time-Based Employment</li> <li>iv. Casual Employment</li> <li>v. Part-time Employment. § 10</li> </ol>	<p>In case of dispute, the Labor Office may decide whether an employment is “regular employment” based on:</p> <ol style="list-style-type: none"> <li>i. type of work;</li> <li>ii. requirement of another employee upon end of existing employment; and whether the employee in question worked at the enterprise regularly for more than a year. <i>Rule 3</i></li> </ol>
<b>Work Evaluation</b>	<ul style="list-style-type: none"> <li>• Enterprise may conduct an annual work evaluation of employee based on justifiable and reasonable grounds and procedures. § 112</li> <li>• An employer may terminate an employee’s employment on grounds of incompetency if the employee’s work has been evaluated as ‘unsatisfactory’ or ‘low quality’ continuously for three or more times during work evaluation conducted under the Labor Rules and Employment By-Laws. § 142</li> </ul>	<ul style="list-style-type: none"> <li>• An employer must conduct an annual work evaluation of an employee at the beginning of each fiscal year in accordance with the Employment By-Laws.</li> <li>• The records of work evaluation form must be securely maintained for at least 3 years. <i>Rule 63</i></li> </ul>
<b>Employee Records</b>	[No provision]	<ul style="list-style-type: none"> <li>• An employer must maintain personal records of each employee, including name, address, family details, citizenship, contact information and other information that the employer deems necessary.</li> <li>• Records of attendance and payments made to employees must be kept secure for at least 5 years. <i>Rule 81</i></li> </ul>
<b>Reserve Period</b>	<ul style="list-style-type: none"> <li>• An employee may be kept in reserve under special circumstances such as lack of supplies, economic hardship or situations outside of employer’s control. The employment relationship is deemed to continue during the reserve period. § 15.</li> <li>• During the reserve period, an employer must pay the employee half of the remuneration regularly earned by the employee. Unless</li> </ul>	<p><u>Notice to Employee</u></p> <p>Before placing an employee in reserve, the employer must notify the employee of the following:</p> <ol style="list-style-type: none"> <li>i. reason for placing the employee in reserve;</li> <li>ii. reserve period;</li> </ol>

	<p>the employee is notified otherwise, the employee is not required to be present at the workplace during the reserve period. § 39.</p>	<ul style="list-style-type: none"> <li>iii. position, department, and duties;</li> <li>iv. employee’s entitlement to half of the monthly remuneration; and</li> <li>v. any other matter that the employer deems important. <i>Rule 5</i></li> </ul> <p><u>Alternative Placement:</u></p> <p>During the reserve period, an employee may be placed in another department, unit, or agency within the enterprise if:</p> <ul style="list-style-type: none"> <li>i. The employee is not required to perform work that is lower-skilled than his/her previous duties without consent.</li> <li>ii. The employee’s remuneration and benefits may not be reduced. <i>Rule 6</i></li> </ul>
<p><b>Employment Agreement</b></p>	<p>A written employment agreement is mandatory (except for casual employment). The employment agreement must specify information such as remuneration, benefits, and terms of employment. § 11</p>	<p>The employment agreement must also specify the following:</p> <ul style="list-style-type: none"> <li>i. type of employment;</li> <li>ii. employee’s major duties and position;</li> <li>iii. whether Employment By-Laws are an integral part of the agreement;</li> <li>iv. place, time, and effective date of employment agreement; and</li> <li>v. other necessary conditions for employment. <i>Rule 4</i></li> </ul>
<p><b>Labor Permit and Work Permit for Foreign Nationals</b></p>	<p><u>Application by Employer</u></p> <p>An employer who wishes to hire a foreign national in a skilled position must obtain a Labor Permit for the foreign national from the Department of Labor. § 22.</p>	<p><u>Application by Employer</u></p> <p>To obtain a Labor Permit for a foreign national, an employer must apply to the Department of Labor, along with the following documents:</p> <ul style="list-style-type: none"> <li>i. original copy of advertisement published in national-level daily newspaper seeking qualified Nepalese citizens;</li> <li>ii. evidence of advertisement’s publication in the portal established by the Ministry;</li> <li>iii. certified copy of passport (valid for at least six months);</li> <li>iv. bio-data of the foreign national;</li> <li>v. employer’s tax clearance certificate;</li> <li>vi. if a Nepalese national has applied for the position, a brief summary of that person’s qualifications, skills, and the process to select employee;</li> <li>vii. Plan of action to train Nepalese citizens and eventually substitute the foreign national; and</li> <li>viii. If required, no-objection letter by the Ministry of Home Affairs. <i>Rule 7</i></li> </ul>

Application by Foreign National

- A foreign national who wishes to work in Nepal must obtain a Work Permit from the Department of Labor.
- The following foreign nationals are exempt from the requirement to obtain a Work Permit:
  - i. foreign nationals with diplomatic immunity; and
  - ii. foreign nationals working in Nepal under a treaty or agreement with the Government of Nepal under which a Work permit is not required. § 23.

Exemption from Application

Upon documenting relevant information in its records, the Department of Labor may issue a Work Permit to the following foreign nationals without a formal application process:

- i. Chief Executive and additional number of employees as prescribed in an enterprise operated with foreign investment or with foreign aid; and
- ii. Technical manpower who is in Nepal for three months or less to repair machinery/equipment or affix new technology or perform similar works of emergency nature. § 24

Application by Foreign National

- To obtain a Work Permit, a foreign national who wishes to work in Nepal must submit an application to the Department of Labor either directly or through the nearest diplomatic mission of the Government of Nepal, along with the following supporting documents:
  - i. certified copy of passport (valid for at least six months);
  - ii. if required for the work, copies of certificates establishing relevant educational qualifications, skills or knowledge;
  - iii. offer of employment from employer; and
  - iv. if required, no-objection letter from the Ministry of Home Affairs.
- The Department of Labor, at its discretion, may deny the application if it finds that Nepalese manpower is available to perform the relevant work or service. *Rule 9*

Fees for Labor Permit or Work Permit

Time Period	Fees
For employment of up to 6 months	NPR 15,000 (approx. USD150)/ person
For employment of more than 6 months	NPR 20,000 (approx. USD 200)/person

*Rule 10*

Validity of Labor Permit or Work Permit

Generally, the term of Labor Permit or Work Permit shall not exceed the period specified in a no-objection letter issued by the Ministry of Home Affairs subject to the following:

- For a foreign national with superior technical skills: Maximum of 5 years
- For others: Maximum of 3 years. *Rule 11*

Renewal of Labor Permit or Work Permit

The employer must submit an application for renewal at least 30 days before

		<p>the expiry of the foreign national's current Labor permit or Work Permit along with the following information:</p> <ol style="list-style-type: none"><li>i. work level of the foreign employee;</li><li>ii. if required, copy of no-objection letter from the Ministry of Home Affairs;</li><li>iii. progress report on plan to train Nepali citizens to gradually substitute foreign national;</li><li>iv. receipt showing payment of renewal fees; and</li><li>v. other documents deemed necessary by the Department of Labor.</li></ol> <p>The Department of Labor may renew the Labor Permit or Work Permit for additional two years in special cases after obtaining approval from the Ministry. <i>Rule 12</i></p> <p><u>Maximum Cap of Foreign Nationals</u></p> <p>Except for foreign nationals with diplomatic immunity or in cases where Labor Permit is not required under an agreement with the Government of Nepal, foreign nationals may consist of up to only five percent of the total number of employees in an enterprise. <i>Rule 13(2)</i></p> <p><u>Exemption of Labor Permit in Certain Enterprises</u></p> <p>The Department of Labor may issue a Labor Permit to a foreign national employed in the following enterprises without a formal application process. The maximum number of foreign nationals in such enterprises are as follows:</p> <ul style="list-style-type: none"><li>• <i>An enterprise established under foreign investment laws:</i> As approved by the Government of Nepal.</li><li>• <i>An enterprise operated with foreign aid:</i> As specified in the agreement between the Government of Nepal and the foreign government or organization.</li></ul> <p>If the number of foreign nationals is not specified as above, the Department of Labor may issue Labor Permit to a maximum of three foreign nationals in an enterprise. <i>Rule 13(1)</i></p> <p><u>Cancellation of Labor Permit or Work Permit</u></p> <p>The Department of Labor may cancel Labor Permit or Work Permit if</p>
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<b>Payment through Banking Channels</b>	[No provision]	Depending on the availability of banking services, the Ministry may require that payment of remuneration or benefits be done only through banks or financial institutions for specific types of employers in specific sectors. <i>Rule 21</i>
<b>Provident Fund</b>	An employer must deduct 10 percent of an employee's basic monthly remuneration and add the same amount on behalf of the employer towards a provident fund for each employee each month. <i>§ 52</i>	<p>Until a Social Security Fund is established under the Contribution-Based Social Security Act 2074 (2017), an employer must deposit an employee's provident fund amount in:</p> <ul style="list-style-type: none"> <li>i. the Employees Provident Fund operated by the Government of Nepal;</li> <li>ii. a retirement fund approved by the tax authority; or</li> <li>iii. a separate account. <i>Rule 22(1)</i></li> </ul>
<b>Gratuity</b>	Each month, the employer must deposit an amount equivalent to 8.33 percent of employee's basic remuneration as gratuity. <i>§ 53</i>	<p>Until a Social Security Fund is established under the Contribution-Based Social Security Act 2074 (2017), an employer must deposit an employee's gratuity in:</p> <ul style="list-style-type: none"> <li>i. Citizens Investment Trust;</li> <li>ii. a retirement fund approved by the tax authority; or</li> <li>iii. a separate account. <i>Rule 23(1)</i></li> </ul>
<b>Housing Fund Expenses</b>	[No provision]	An enterprise may use the amount held in the Housing Fund, established under Section 41 of the previous Labor Act 2048 (1992), to arrange housing for employees or spend it to benefit employees as per the decision of the Labor Relations Committee. <i>Rule 85(1)</i>

<p><b>Service Fee</b></p>	<p>Service fee charged under the Collective Agreement by hotels, motels, restaurants, jungle safari and other businesses must be distributed as prescribed. § 87(3)</p>	<p>Service fee charged by hotels, motels, restaurants, jungle safari and similar other businesses must be distributed to the workers as follows:</p> <ol style="list-style-type: none"> <li>As per the agreement between the employers' association and the trade union representing the most number of workers.</li> <li>If there is no agreement, then the amount collected as service fee must be distributed as follows:</li> </ol> <table border="1" data-bbox="1283 437 2033 655"> <thead> <tr> <th>Distributee</th> <th>Percentage of Distribution</th> </tr> </thead> <tbody> <tr> <td>Workers, trainees, or laborers employed through labor suppliers</td> <td>71 percent</td> </tr> <tr> <td>Employer (for management of breakage and operational leakage)</td> <td>24 percent</td> </tr> <tr> <td>Employers' association</td> <td>2.5 percent</td> </tr> <tr> <td>Trade union</td> <td>2.5 percent</td> </tr> </tbody> </table> <p><i>Rule 82</i></p>	Distributee	Percentage of Distribution	Workers, trainees, or laborers employed through labor suppliers	71 percent	Employer (for management of breakage and operational leakage)	24 percent	Employers' association	2.5 percent	Trade union	2.5 percent
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<p><b>Weekly and Public Holidays for Domestic Workers</b></p>	<p>Weekly and Public Holidays for domestic workers will be as prescribed. § 88(2)</p>	<ul style="list-style-type: none"> <li>Domestic workers are entitled to the following paid holidays: <ul style="list-style-type: none"> <li>1 day per week; and</li> <li>12 public holidays per year.</li> </ul> </li> <li>If a domestic worker has to work on a public holiday or a weekly holiday, the worker must either be given substitute leave or additional remuneration.</li> <li>Notwithstanding the above, a domestic worker and an employer can agree to a different arrangement subject to Labor Act and Labor Rules. <i>Rule 83</i></li> </ul>										
<p><b>Workplace Safety</b></p>	<p><u>Health and Safety Policy</u></p> <p>To ensure workplace safety, an employer must prepare and implement a Health and Safety Policy, a copy of which must be filed at the Labor Office. § 68</p>	<p><u>Health and Safety Policy</u></p> <ul style="list-style-type: none"> <li>The Health and Safety Policy ("Policy") must address the following issues: <ul style="list-style-type: none"> <li>potential accidents;</li> <li>precautionary measures when operating machinery, equipment and chemical substances;</li> <li>employee's health and safety, etc.</li> </ul> </li> <li>The Policy must be prepared in consultation with the Health and Safety</li> </ul>										

	<p><u>Health and Safety Committee</u></p> <p>In an enterprise with 20 or more employees, a Health and Safety Committee, which includes employees' representatives, must be established. The Committee's role is to advice on issues related to workplace safety and security. § 74</p> <p><u>Security Measures</u></p> <p>Special security measures must be adopted to protect employees from injuries. § 78</p>	<p>Committee established under Rule 37 or the employees' trade union. <i>Rule 34</i></p> <p><u>Health and Safety Committee</u></p> <ul style="list-style-type: none"> <li>• The Committee's meeting must be held at least four times a year.</li> <li>• The Committee will be responsible for monitoring and evaluation of implementation of the Policy.</li> <li>• The Committee will provide advice to the employer on making improvements to the Policy and its implementation. <i>Rule 37,38</i></li> </ul> <p><u>Security Measures</u></p> <p>An employer must adopt special security measures to protect employees from injuries by machinery/appliances, pressure plants, boilers, fire, dust, and chemical substances at the workplace. <i>Rule 39-41; 44</i></p> <p><u>First Aid</u></p> <p>Employer must make arrangements for emergency first aid at workplace premises. <i>Rule 49(1)</i></p> <p><u>Medical Expenses</u></p> <ul style="list-style-type: none"> <li>• The employer must bear the cost of medical treatment for an employee who is injured during the course of employment.</li> <li>• Such costs may be deducted by the employer from the amount received from medical insurance and accident insurance. <i>Rule 49(2)</i></li> </ul> <p><u>Notice to Labor Office</u></p> <p>Except in cases of minor injuries, if an employee is injured or deceased in an accident during the course of his/her employment, the employer must inform the Labor Office within 7 days. <i>Rule 50</i></p>
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<p><b>Workers' Compensation</b></p>	<ul style="list-style-type: none"> <li>An employer must carry accident insurance equal to at least NPR 700,000 (approx. USD 7,000) for each employee.</li> <li>An employee who becomes disabled due to an accident is entitled to compensation based on his/her percentage of disability. § 55</li> </ul>	<p><u>Procedure to Receive Compensation</u></p> <ul style="list-style-type: none"> <li>An employee may apply to the Labor Office for assessment of disability percentage within one year of hospital discharge.</li> <li>The Labor Office will request a hospital, medical institution or a Medical Board to conduct a disability assessment.</li> <li>Subject to § 55(1) of the Labor Act, the employee is entitled to compensation from the insurance company based on percentage of his or her disability. <i>Rule 26</i></li> </ul>
<p><b>Special Requirements for Large Employers</b></p>	<p>[No provision]</p>	<ul style="list-style-type: none"> <li>An employer with 50 or more employees must arrange for a break room and canteen for employees.</li> <li>An employer with 50 or more <i>female employees</i> must arrange for a child care center either by itself or jointly with another employer. <i>Rule 45-47</i></li> </ul>
<p><b>Labor Supplier</b></p>	<p><u>Requirement for License</u></p> <p>A labor supplier must obtain a license from the Department of Labor or the Labor Office. § 59</p>	<p><u>Requirement for License</u></p> <p>A company that wishes to supply labor must submit an application to the Labor Office or the Department of Labor along with the following information:</p> <ol style="list-style-type: none"> <li>certified copy of company registration;</li> <li>certified copy of Articles of Association and Memorandum of Association;</li> <li>certified copy of PAN/VAT Registration Certificate;</li> <li>receipt of tax clearance;</li> <li>certified copy of citizenship of the company's directors;</li> <li>information on the type of work or services for which labor will be supplied; and</li> <li>other documentations as deemed appropriate by the Labor Office or the Department of Labor. <i>Rule 27</i></li> </ol> <p><u>Fee and Security Deposit</u></p> <p>The company must also pay an application fee of NPR 10,000 (USD 100) and provide a bank guarantee or cash equivalent in the amount of NPR 1,500,000 (USD 15,000). <i>Rule 28</i></p>

	<p><u>Annual Submission</u></p> <p>A licensed labor supplier must file certain details as prescribed by <i>Poush</i> (mid-January) before the Department of Labor. § 60</p>	<p><u>Annual Submission</u></p> <p>A labor supplier must file the following details by <i>Poush</i> (mid-January) before the Department of Labor or the Labor Office:</p> <ol style="list-style-type: none"> <li>i. information regarding laborers, quantity, employing organizations and name of main employers;</li> <li>ii. information regarding remuneration, allowance, benefits;</li> <li>iii. amount deposited in the Social Security Fund for each laborer;</li> <li>iv. Labor Audit Report; and</li> <li>v. company's address and director's name and contact information. <i>Rule 31</i></li> </ol> <p><u>Annual Renewal of License</u></p> <p>Labor supplier's license must be renewed annually by submitting the following documents to the Labor Office or the Department of Labor by <i>Asoj</i> (mid-October):</p> <ol style="list-style-type: none"> <li>i. receipt of tax filing or tax clearance certificate;</li> <li>ii. receipt of annual filing to the Labor Office or the Department of Labor;</li> <li>iii. proof of renewal of bank guarantee; and</li> <li>iv. renewal fee. <i>Rule 30</i></li> </ol> <p><u>Suspension of License</u></p> <p>The Department of Labor or the Labor Office may suspend a labor supplier's license for up to six months at a time if:</p> <ol style="list-style-type: none"> <li>i. the labor supplier does not submit its annual filing under Rule 31; or</li> <li>ii. the labor supplier does not pay fine within the deadline as imposed by the Department of Labor or the Labor Office under § 62 of the Labor Act.</li> <li>iii. the labor supplier violates the terms of its license.</li> </ol> <p>If the labor supplier establishes that it is in compliance with applicable regulations, then the license will be reinstated. <i>Rule 32</i></p> <p><u>Role of the Main Employer</u></p> <p>The main employer, who employs outside laborers through the labor supplier, must comply with the following:</p> <ol style="list-style-type: none"> <li>i. The main employer may not discriminate between its regular employees and</li> </ol>
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		<p>outside laborers in terms of facilities other than remuneration and benefits.</p> <ul style="list-style-type: none"> <li>ii. The main employer must maintain personal and attendance records of outside laborers.</li> <li>iii. The main employer must make payments to the labor supplier company within the time period as per the agreement. If the time period is not specified, then payments must be made monthly.</li> <li>iv. The main employer must ensure representation of outside laborers into the Health and Safety Committee. <i>Rule 33</i></li> </ul>
<b>Annual Labor Audit</b>	Each enterprise must conduct a labor audit and prepare a report to ensure that its labor practices are performed in accordance with the Labor Act, Labor Rules, and existing law. § 100(1)	<ul style="list-style-type: none"> <li>• The labor audit must be conducted by <i>Poush</i> (mid-January) by a management-level employee or a person/organization engaged in the labor sector.</li> <li>• A copy of the labor audit report must be provided to the Labor Relations Committee and to the regulatory agency with jurisdiction over the enterprise. <i>Rule 56</i></li> </ul>
<b>Payments to Employee at the End of Employment</b>	Employees are entitled to all outstanding amount payables within 15 days of the end of employment. § 148	If an employee is unable to be present to receive outstanding amounts payable at the end of the employment, then the employer must deposit such amounts in the employee's bank account. <i>Rule 74</i>
<b>Welfare Fund</b>	[No provision]	<ul style="list-style-type: none"> <li>• After distribution of bonus under § 13 of the Bonus Act 2030 (1974), an enterprise must deposit 70 percent of the remaining amount in an enterprise-level welfare fund.</li> <li>• The operation and use of the fund will be as per the Labor Relations Committee's decision.</li> <li>• The amount in the fund can be used for the employees and their families' medical treatment, education, sports, entertainment and other activities for the collective interest of the employees. <i>Rule 84</i></li> </ul>
<b>Collective Bargaining</b>	<p><u>Collective Bargaining Committee</u></p> <ul style="list-style-type: none"> <li>• In an enterprise with 10 or more employees, a Collective Bargaining Committee ("Committee") must be established.</li> </ul>	<p><u>Collective Bargaining Committee</u></p> <ul style="list-style-type: none"> <li>• The number of members in the Committee will be as follows:</li> </ul>

	<ul style="list-style-type: none"><li>• The Committee may make collective demands in writing and negotiate on behalf of the employees before the employer. § 116</li><li>• If a dispute between the employer and employees cannot be resolved through collective bargaining, then the dispute must be resolved by mediation through the Labor Office. § 118</li></ul>	<ul style="list-style-type: none"><li>○ In an enterprise with up to 20 employees: 3 members</li><li>○ In an enterprise between 20 and 100 employees: 5 members</li><li>○ In an enterprise with more than 100 employees: Maximum 11 members.</li></ul> <p><i>Rule 64</i></p>
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**DISCLAIMER: INFORMATION CONTAINED IN THIS DOCUMENT IS ONLY FOR GENERAL INFORMATION PURPOSE AND SHALL NOT BE CONSIDERED TO BE LEGAL OPINION.**

For further information about the subjects covered in this Client Briefing, please contact:

**Pradhan, Ghimire & Associates Pvt. Ltd.**  
37-9 Gaurav Marg, Maitighar Kathmandu, Nepal  
Tel: +977 1 425 2272 Fax: +977 1 426 6422  
Email: [office@pradhanlaw.com](mailto:office@pradhanlaw.com) Web: [www.pradhanlaw.com](http://www.pradhanlaw.com)

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