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Doing Business in Nepal

Neupane Law Associates

2023/24

About Us

Neupane Law Associates is a leading law firm in Nepal. The firm specialises in corporate transactions and dispute resolution. Its lawyers have extensive experience and expertise in banking, foreign investments, mergers and acquisitions, and project development and finance. Its internationally educated team has extensive experience in advising in high-value, complex and innovative matters. The firm is recognised for: its technical skill and expertise; its timely, detail-oriented and professional service; and its business-focused, commercial and practical legal advice. It is the firm of choice for many banks, financial institutions and multinational corporations. The firm has consistently achieved top-tier rankings from major law firm directories: Chambers & Partners (Band-1), The Legal 500 (Tier-1) and IFLR1000 (Recommended).

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A Legal Guide to Doing Business In Nepal

1.1 Legal System

Nepal's legal system is a mixture of Hindu law, local customs and traditions, common law and civil law. Nepal was traditionally and historically ruled by the Kings. Modern Nepal was founded by King Prithivi Narayan Shah of Gorkha in 1768 after unification through conquest. The Monarchy existed for 240 years thereafter and was abolished in 2008. During the 240 year period, Nepal was ruled by various Kings of the Shah dynasty and their Prime Ministers belonging to the Rana family.

First codified modern law in Nepal was the *Muluki Ain*. Prime Minister Jung Bahadur Rana promulgated the first written code called *Muluki Ain* (also, literally translated as "General Code" or "Country Code") in 1854, making *Muluki Ain* one of the oldest civil codes in the world (French Napoleonic Code was promulgated in 1804, German Civil Code in 1900) and also one of the oldest in Asia (Indonesian Civil Code was promulgated in 1848, Japanese in 1896). Unlike other civil codes of the time, the *Muluki Ain* is not a re-codification of Roman Law principles derived from the re-discovered Corpus Juris Civilis. Rather, *Muluki Ain* is codification of *Hindu* religious law and societal customs prevailing at the time.

The *Muluki Ain* was revised and re-enacted in 1962. It had thereafter been amended 26 times. Most important commercial law amendments were the introduction of the Contract Act in 1966, amendments by the Evidence Act in 1974 and the second Contract Act in 2000. The introduction of the Contract Act made it such that commercial transactions in Nepal could function either through the Chapter 17 - On General Transactions of the *Muluki Ain* through *likhats* (deeds) or through imported concepts of contracts enshrined in the Contract Act. Corporate and commercial laws are heavily influenced by English and Indian laws.

Foreign investment was formalised through the Foreign Investment and Technology Transfer Act 1992. Nepal became a member of the World Trade Organisations in 2004 and many laws such as Company Act 2006, Insolvency Act 2006, Competition and Market Protection Act 2006, Electronic Transactions Act 2008 were introduced. Following the people's movement in 2006, the Interim Constitution of Nepal was promulgated in 2007. Following two rounds of constituent assembly elections, the Constitution of Nepal 2015 was enacted which has now established Nepal as a

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Nepal's legal landscape, a blend of Hindu law, local customs, and modern legal codes, reflects a rich historical evolution from monarchy to federal democracy.

Federal Democratic Republic. The new Constitution ensures separation of power and independence of the judiciary.

The new *Muluki Civil* Code 2017 and *Muluki* Penal Code 2017 has replaced the previous *Muluki Ain* since 17 August 2018. The Civil Code has embodied many legal provisions identical to that of original *Muluki Ain* such as family law, laws related to partition of property, laws related to trusts, etc. It has also incorporated newer legal concepts with regards to the Nepalese legal system such as laws concerning personhood, inter-state adoption, torts, product liability and private international law. It has also replaced the Contract Act 2000. Recently, Foreign Investment and Technology Transfer Act 2019 and the Private Public Partnership and Investment Act 2019 have been enacted in a bid to facilitate and increase foreign investment. Government is also working to reform laws relating to intellectual property, foreign exchange, and environment regulation.

1.2 Judicial Order

Nepal have a three-tier judiciary with the Supreme Court, the High Court and the District Court. The Supreme Court of Nepal is the highest judicial body and the court of record. There are 7 High Courts with one High Court in each province and 77 District Courts.

The District Court have jurisdiction to hear and settle all cases of first instance within its territory and appeals of the decisions made by quasi-judicial bodies and local level judicial committees. The High Court have jurisdiction to hear appeals from the District Court and for writ application to enforce fundamental rights. High Court exercises jurisdiction of first instance in issues relating to competition law, company law, and certain commercial law matters. The Supreme Court has ordinary jurisdiction to hear appeals from lower courts, and extraordinary jurisdiction to hear disputes with public interest elements and writs where alternative remedies are not available.

Other courts are the Special Court for corruption and money laundering trials, the Debt Recovery Tribunal for recovery of debts of banks and financial institutions, the Revenue Tribunals for tax issues, and the Labour Court for employment law disputes. The Department of Industry, Copyright Registrar's Office, Office of the Company Registrar and Labour Offices also exercise certain judicial powers. Judicial committees formed at the municipal and rural municipality level also have concurrent jurisdiction to hear small claim disputes.

2. Restrictions on Foreign Investments

2.1 Approval of Foreign Investments

Foreign Investment and Technology Transfer Act 2019, Public Private Partnership and Investment Act 2019, Company Act 2006, Foreign Exchange (Regulation) Act 1962, and various other circulars, directives and policies regulate foreign investments. Specific sectoral laws and policies are also applicable for banking, insurance, telecommunications and aviation sectors.

Foreign investments require prior approval from the Department of Industry or the Investment Board depending upon the amount of the proposed investment. Investments under NPR 6 billion (~USD 46 million) are approved by the Department of Industry, and investments above such amounts are approved by the Investment Board. Notification to Nepal Rastra Bank is needed prior to bringing in the investment in Nepal. The minimum foreign investment has been set at NPR 20 million (~USD 151,000) per investor.

Foreign companies also have the option to set up liaison offices or branch offices in Nepal. Setting up of a branch office and liaison office is regulated by the Company Act 2006. Liaison offices of a foreign company may be registered at the Office of the Company Registrar without prior approval except in regulated sectors. Liaison offices are allowed to set up offices and hire employees, but they are not allowed to sell goods or provide services. Liaison offices may be useful for multinational companies coordinating with distributors or clients. It is mandatory for foreign companies to set up a branch office if they are undertaking transactions or business regularly for a period of 30 days or more from a location within Nepal. Setting up of branch offices requires service agreement with authorised entities in Nepal or approval from a government authority.

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Foreign investments in Nepal require approval from the Department of Industry for investments under NPR 6 billion and from the Investment Board for larger amounts. A minimum investment of NPR 20 million (~USD 151,000) per investor is mandated.

Foreign investment is permissible through various modes such as investment in shares, purchase of shares or assets of an existing company, investment in venture capital funds or funds that invest in secondary stock markets, and investment by issue of securities in foreign stock markets. Investment is permitted on a fully owned or joint venture basis depending on sector specific rules. Although joint ventures are not mandatory in most sectors, it is also common to have a local partner.

Technology transfers and leases by foreign entities are also regulated by the investment law and require regulatory approvals. Technology transfers include licensing of foreign intellectual property, franchising, technical expertise, users licence, management, advisory and marketing services. Such arrangements are common in hospitality, restaurants, and manufacturing sectors. Leases by foreign persons of airlines, ships, machinery and equipment, and technology transfers are also classified as investments. The lessees, licensees and franchisees will only be allowed to make payments of lease, licence fees and royalties if the respective transactions have been approved.

Foreign investment is permitted in manufacturing, energy, banking, insurance, mining, construction, infrastructure, tourism, information technology, and other service sectors classified industries by the Industrial Enterprises Act 2017. Foreign equity investment is restricted in primary area of agriculture, cottage and small industry, personal service businesses, arms and ammunition, buying and selling of land and houses, retail, foreign exchange and remittance services, local catering, local trekking, travel agency, trekking and mountaineering, rural tourism, mass media (including films of national languages) and professional consulting services such as management, accounting, engineering, legal services, and language, music, and computer training. Restrictions on some of these sectors do not fully comply with WTO commitments of Nepal.

Foreign equity investment in some sectors is limited to a certain percentage. A foreign investor can make maximum equity investment of 51% in consulting services (except for those completely restricted), 49% in domestic airlines, 80% in international airlines, 95% in aviation school, 95% in aircraft repair and maintenance institutions, 80% in telecommunication services, and 20% to 85% in banks and financial institutions.

Foreign Investment and Technology Transfer Act 2019 requires investment approval to be given within 7 days of application with a full set of documents. However, it generally takes over 1 month to obtain the initial approval in practice. Although filing an application for foreign investment is possible online, the review procedure for foreign investment is documentary.

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Foreign investment is permissible through various modes, including shares, asset purchase, venture capital funds, and issue of securities in foreign stock markets. It is allowed in a wide range of sectors in Nepal, including manufacturing, energy, banking, insurance, mining, construction, infrastructure, tourism, information technology etc.

The prevailing laws do not set out criteria required for approval. The authorities issuing approval verify if the investment has been made in the permitted sector and the documents submitted are in compliance with applicable law and follow prescribed formats.

2.2 Procedure and Sanctions in Case of Non-compliance

The procedures that investors need to follow to obtain foreign investment approval, incorporate a company and undertake other formalities are set out below.

2.2.1 Investment approval

The investor or the target company has to submit an application to the approving authority along with a project report containing a time schedule for investment, credibility certificate from a foreign bank, investor's profile, corporate and identification documents, corporate decisions, power of attorneys and other documents. Agreements relevant to the investment such as joint venture agreement, share purchase agreement, share subscription agreement, license agreements should also be filed. The government is currently working to implement an automatic approval process for new investments and capital increase of additional investments. Under the automatic foreign investment approval process the approval is provided to the investors once the documents are submitted through the online portal of Department of Industry. The upper limit of investment of NPR 500 million (~USD 3,733,000) and specific areas of investment have been set for approvals through the automatic approval route.

2.2.2 Company registration

Company with foreign person or entity as shareholders can only be incorporated after obtaining investment approval. The copy of the foreign investment approval needs to be submitted at the Office of the Company Registrar together with the application, memorandum, articles, and other documents. Name of the company should be reserved and approved prior to the application.

2.2.3 Tax, local authority and industry registration

A newly incorporated company is also required to register itself at a local tax office and local authority. Lease agreement between the company and lessor of the property where the address of the company is located and identification documents of the lessor should be submitted and withholding taxes applicable on rent should be paid prior to the registration.

Procedure of Foreign Investment in Nepal

"Investors receive approval once they submit their documents through the online portal under the automatic foreign investment approval process. Specific investment areas and a maximum limit of NPR 500 million (~USD 3,733,000) have been designated for the automatic foreign investment approval route.

Company should register itself at the Department of Industry following tax registration.

2.2.4 Notification to Central Bank

Notification of investment to Nepal Rastra Bank (the central bank of Nepal) is also required prior to bringing in the investment in Nepal. For this, an application in a prescribed format, should be submitted by the company incorporated by the investor along with investment approval, and other constitutional and incorporation documents of the Company.

2.2.5 Other Specific Licenses

Businesses involved in certain specific sectors such as hydropower, telecommunications, airlines, casino, bank, insurance, etc. require sector specific licences from the concerned regulatory authorities in order to operate in Nepal.

It generally takes around 3 months to complete all initial procedures required for setting up a new company owned by foreign investors. Additional time is required to obtain sector specific licences.

Consequences of investing without approval are unclear as it is not specified in law. In practice, shareholding of the foreign investor in a company will not be recognized without foreign approval. Investors are not likely to be granted foreign exchange approvals to repatriate investment made without approvals.

2.3 Commitments Required from Foreign Investors

Approving authorities impose various conditions that foreign investments have to comply with. Investors must invest a minimum amount equivalent to NPR 20 million (~USD 151,000). The investment amount must be brought within the approved investment schedule through a proper banking channel. The conditions also specify that any other permits such as environmental clearances and specific sectoral licences must be obtained prior to starting business. The investment will have to be recorded at the Nepal Rastra Bank once it is invested.

2.4 Right to Appeal

The approving authority may refuse to provide foreign investment approval and provide written notice of refusal within 7 days after examination of submitted documents. Upon such refusal, the investor has the right to appeal to the Ministry of Industry, Commerce and Supplies where the Ministry provides its decision within 30 days. Further, the investors will also have the right to file for review of the decision of the Ministry at the Supreme Court of Nepal under its special writ jurisdiction.

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> The approving authority may refuse to provide foreign investment approval by providing notice of refusal within 7 days. In such a case, investors have the right to appeal to the Ministry of Industry, Commerce, and Supplies.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entities

Corporate vehicles available for foreign investment under Nepalese law are limited to private and public limited companies. Foreign investors are not allowed to invest in private firms and partnerships. Liaison and branch offices are also available for foreign companies. Limited liability partnership is yet to be introduced in Nepal. Further details on corporate vehicles are set out below:

3.1.1 Private limited company

A private limited company with limited liability is the most popular corporate vehicle in Nepal. It provides shareholders with the benefit of limited liability and flexibility with corporate governance matters. Incorporation of a private limited company requires at least one shareholder. It can have a maximum of 101 shareholders. The law does not require private limited companies to have a minimum capital. The private limited company is required to have a memorandum of association and articles of association. Articles of association are optional for single shareholder companies. Shareholders agreement is also recognised as a constitutional document.

3.1.2 Public limited company

Establishing a public limited company requires a minimum of 7 shareholders. There are no limits to maximum shareholders. The minimum paid capital for a public limited company is NPR 10 million (~USD 75,000). Certain companies undertaking business of banking, financial transactions, insurance, stock exchange, pension fund, mutual fund and telecommunication services are mandatorily required to register as public limited companies.

3.1.3 Branch office of a foreign company

A foreign company can only register its branch to undertake income-generating activities in Nepal. Establishment of branch offices requires recommendation from a relevant agency or agreements to be entered into with authorised entities. Foreign companies undertaking business or transactions from an office or location within Nepal regularly for a period of over 30 days are required to register a branch in Nepal. Branch of a foreign company can only undertake the transactions allowed to carry out in its country of incorporation.

3.1.4 Liaison office of a foreign company

Liaison offices (also called representative offices) can be established by foreign companies to undertake liaison activities in Nepal. It is not allowed to undertake any activities that generates income in Nepal. Approval from regulatory authorities are not required prior to registration other than for regulated sectors such as banks. The liaison offices can contact and correspond on behalf of foreign companies, help clients during import or use of products and services of foreign companies without taking any remuneration and coordinate with the agents or distributors appointed of foreign company. Once registered, liaison offices are not subject to renewals and can operate until de-registered. Further, a liaison office of a foreign company can be converted into a branch office.

3.2 Incorporation Process

The private limited company, public limited company, branch and liaison office of foreign companies should be registered in the Office of Company Registrar. The application has to be submitted online, however,

Common Forms of Legal Entities in Nepal

Private Limited Company

- Benefit of limited liability
- Requires at least one shareholder
- Can have a maximum of 101 shareholders

Public Limited Company

- Requires minimum 7 shareholders
- No limits on maximum shareholders
- Minimum paid capital of NPR 10 million (~USD 75,000)

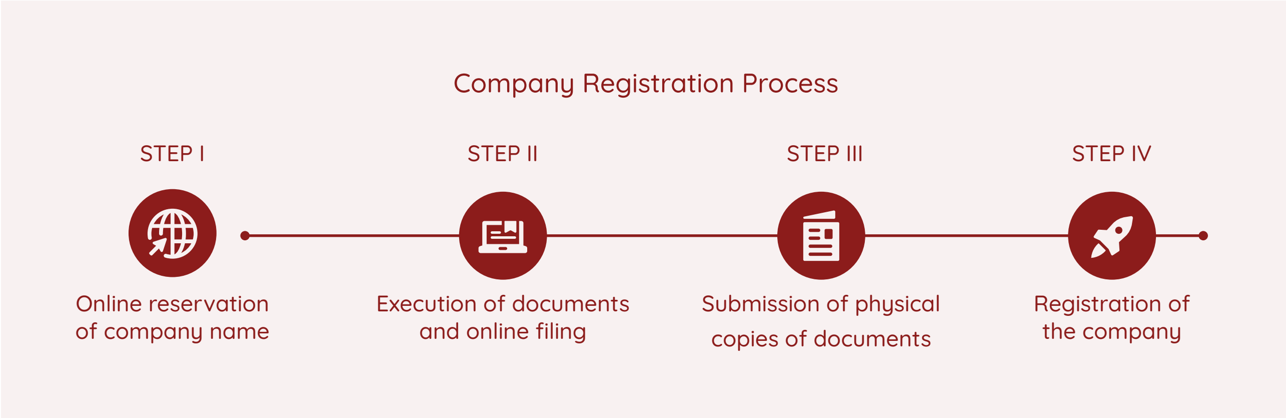
Branch Office of a Foreign Company

- Can undertake income-generating activities in Nepal
- Requires recommendation from a relevant government agency or agreements with authorised entities.
- Can only undertake the transactions allowed to carry out in its home country.

Liaison Office of a Foreign Company

- Cannot undertake income generating activities in Nepal
- Approval from regulatory authorities are not required other than for regulated sectors
- Once registered, are not subject to renewals
- Can be converted into a branch office

The application has to be submitted online, however, physical presence and paperwork is also required. It generally takes 10-15 days to complete the process of company incorporation.



physical presence and paperwork is also required. It generally takes 10-15 days to complete the process of company incorporation. Further details of the process are set out below.

3.2.1 Reservation of company name

The person(s) intending to incorporate the company should reserve a company name through the website of the Office of Company Registrar. The user needs to register first and create a username and password.

3.2.2 Execution and upload of documents

After the approval of the proposed name, the scanned copy of application, executed memorandum of association, articles of association, identity documents of shareholders, approvals obtained, and other documents should be uploaded in the online portal of the Office of the Company Registrar and also be physically submitted.

3.2.3 Registration

Once the online filing of the executed document is completed, physical copies of the documents should be submitted to the Office of Company Registrar. The Office of the Company Registrar will register the company and provide registration certificate, certified memorandum, and articles of association if it finds that the documents submitted are in order.

3.3 Ongoing Reporting and Disclosure Obligations

The private companies are subject to various initial, ongoing and special reporting and compliance obligations. They are set out below.

3.3.1 Initial compliance

Newly incorporated companies are required to undertake various filings within 3 months of its incorporation. The company should disclose and report the address of the company, appoint directors, auditor and company secretary, submit disclosures by directors and allot shares.

3.3.2 Annual compliance

Companies are required to submit minutes of annual general meeting, auditor appointment for the next fiscal year, audited financial statements, details of shareholding, and inventory of shares, debentures and loans annually within 6 months of the end of the financial year.

3.3.3 Special compliance

Companies are also required to make filings and compliance for certain changes to the company. The company is required to report the amendment to memorandum and articles, increase in capital, change of name, change of registered address within 30 days of passing the relevant resolutions. Companies have to record the change of director or secretary within 15 days and are required to file for approval for merger within 30 days and voluntary liquidation within 7 days of resolution being passed.

3.3.4 Foreign investment recordal

Companies with foreign investment are also required to record the investment at Nepal Rastra Bank within 6 months of receipt of foreign investment amount in

Nepal. For the recordal of foreign investment, along with an application in prescribed format, the companies must submit the evidence of notification to the Nepal Rastra Bank, investment approval, constitutional and incorporation documents of the company and foreign investor, investment certificate issued by a commercial bank showcasing the details of foreign investment and authenticated share registry. It generally takes around 1 month to complete the recordal procedure with Nepal Rastra Bank.

3.3.5 Tax compliance

Resident companies are subject to tax on their worldwide income. Non-resident companies are required to pay tax on their net income with a source in Nepal. Companies must submit an income return of a year within 3 months of the end of a fiscal year. The income return must set out the amount of tax payable by the company in that income year. Further, if a company has an assessable income from any business or investment, it is required to pay tax in the following three instalments.

- » 40% of the estimated tax amount by the end of Poush (15 Jan).
- » 70% of the estimated tax amount by the end of Chaitra (15 April).
- » 100% of the estimated tax amount by the end of Ashad (15 July).

3.4 Management Structures

Management of a company in Nepal is headed by the board of directors. A private limited company cannot have more than 11 (eleven) directors and every public company should have a board of directors consisting of a minimum of 3 (three) and a maximum of 11 (eleven) directors. The shareholders of a company elect the board of directors. In addition to the board of directors, the management structure can also consist of managing director, audit committee and company secretary if they cross the relevant paid-up capital threshold.

3.5 Directors', Officers' and Shareholders' Liability

The rules governing the liability of directors and offi-

General Compliances

Initial compliance

- » Applicable to newly incorporated companies
- » Various filings to be undertaken within 3 months of incorporation

Annual compliance

- » Applicable to all companies
- » Various filings to be undertaken annually
- » Within 6 months of the end of the financial year

Special compliance

- » Applicable to all companies
- » Filings and compliance for certain changes to the company
- » Special filings required for events such as the amendment of memorandum and articles, increase in capital, change of name, change of registered address etc.

Foreign investment recordal

- » Applicable to companies with foreign investment
- » Recordal at Nepal Rastra Bank within 6 months of receipt of foreign investment amount
- » Generally, takes around 1 month to complete the procedure

Companies with foreign investment are also required to record the investment at Nepal Rastra Bank within 6 months of receipt of foreign investment amount in Nepal.

cers are the Company Act, memorandum and articles of association of the company, consensus agreement and the individual bylaws of the company. The directors and officers have a duty to act in good faith for the best interest and benefit of the company, comply with the memorandum and articles of association, and disclose any personal interest towards the company.

The concept of piercing the corporate veil is provided by law. Directors and officers may be made personally liable if they breach their duties or commit any offences set out in the Company Act. Gaining personal benefits, acting beyond jurisdiction, not keeping proper books of accounts and annual financial statements, preparing or approving any false annual financial statements, knowingly providing false statements in a meeting, failing to disclose required details to the Office of the Company Registrar, providing false details to the court, acting against the interest of shareholders and others are punishable offences. Further, directors can also be made liable for criminal offences of the corporate entity.

4. Employment Law

4.1 Applicable Regulations

Labour Act 2017 ("**Labour Act**"), Contribution Based Social Security Act 2017 ("**Social Security Act**"), Right to Employment Act 2019 ("**Right to Employment Act**"), Labour Regulation 2018 ("**Labour Regulation**") and Bonus Act 1974 ("**Bonus Act**") are key labour legislations applicable in Nepal. In addition, the bylaws formulated by employers, employment agreement, collective agreement with collective bargaining committee or trade union are recognised as sources of law.

The Labour Act constitutes minimum standards in matters relating to employer-employee relationship and is applicable to all enterprises registered in Nepal including branch offices and liaison offices of foreign companies. The Labour Act is not applicable to Nepal army, police, civil service, and other services established under special laws or special economic zones. Key provisions of the Act relate to working hours, minimum wage, leave, termination, employment benefits, health and safety, insurance and other social security benefits of the employees.

The Social Security Act requires the employer to deposit the employment benefits including provident fund and gratuity to the Social Security Fund within fifteen days of the end of each month. The employer is required to deduct 11% of the basic remuneration of the employee with 20% contribution from the employer and deposit a total of 31% of basic remuneration to the social security fund which will provide certain benefits to the employees like health insurance during the employment and pensions upon retirement.

4.2 Employment Contracts

4.2.1 Employment Agreement

Employers are obligated to undertake an employment agreement with employees except for casual employees. However, the labour office and relevant courts can also recognise an employment relationship even when an employment agreement has not been undertaken between the parties.

It has been specified in the Labour Regulation that the employment agreement should contain terms relating to type and nature of employment, the position of the employee, description of work, date, time and place of the employment agreement and other benefits, terms and conditions of employment. The duration of employment should also be specified in the employment agreement.

4.2.2 Types of Employment

The Labour Act has classified employment as regular, term, task, casual, and part-time. Regular employees are defined as those other than with a fixed term, task or casual employment. Fixed term employees hired for a particular task or for a certain time are classified as term employees or task employees. Employees hired for less than 7 days in a month are classed as casual employees. Employees hired for 35 hours a week or less are classed as part time.

The law does not differentiate between the wages and benefits offered based on the type of employee. Previous law did not require certain benefits such as provident funds and gratuities to be paid to temporary or contract employees, but this distinction has now been removed.

Security of employment until retirement is not pro-

Types of Employment

Regular Employment

All employment other than the term-based, task-based or casual employment.

Task-based Employment

Employment specifying any particular work or service for performance

Term-based Employment

Employment specifying a certain term on the condition to provide any service or perform any work within that period

Casual Employment

Employment on the condition to provide any service or perform any work, for seven days or less within a month

Part-time Employment

Employment on the condition to perform a work in 35 hours or less in a week

vided to term, task or casual employees, and their employment will end after the relevant task is accomplished or term has ended. However, term or task employees may also be reclassified to regular employees if the nature of the work is of a permanent nature irrespective of the provision in the employment agreement.

4.3 Working Time

An employer cannot engage the employees in work for more than 8 hours a day and 48 hours a week pursuant to Labour Act. Additionally, employees cannot be engaged in overtime for more than 4 hours a day and 24 hours a week. The employees cannot be forced to work overtime. Employees engaged to work overtime are entitled to additional remuneration at the rate of 1.5 times the basic remuneration. Half an hour rest must be provided after 5 hours of continuous work.

4.4 Termination of Employment

Nepal does not recognise 'employment at-will' and an employer may only terminate the employee after fulfilling legal procedures. Section 139 of the Labour Act provides that employment cannot be terminated except in accordance with the provisions of the act, regulation or the bylaws. Further details on termination, dismissal and retrenchment are set out below.

4.4.1 Termination

Employment will terminate if an employee resigns, or in the case of term or task employment, the task is complete or the term ends. Employment will also terminate upon commencement of liquidation. Employment can be terminated at the retirement age of 58 years.

4.4.2 Dismissal

The employer may dismiss an employee from the employment for unsatisfactory performance during the probation period of 6 months, has been underperforming in 3 or more consecutive performance evaluations within the period of 3 years, or is unable to work due to physical or mental illness.

Employees may be dismissed for gross misconduct or for third ordinary misconduct within a period of 3 years. Punishing or dismissing an employee of misconduct requires specific procedures to be followed and for the employee to be provided with an opportunity to present his/her clarification. Punishment and dismissal are complex procedures and employers should obtain legal advice prior to taking such action.

4.4.3 Retrenchment

Employees may be retrenched if an employer is facing financial hardship, a problem of overstaffing after the merger or partial or total closure of the enterprise.

The employer should notify the Labour and Employment Office about the grounds of retrenchment before 30 days. The Labour Act also requires the employer to notify and consult with the Trade Union or Labour Relations Committee of the enterprise regarding possible alternatives, grounds of retrenchment and conditions for the selection of workers for retrenchment.

The employer should pay one-month salary for each year of service as the compensation to the retrenched employee in a lump sum. If the employee has worked for less than one year, the compensation should be paid on a proportional basis.

If the employer resumes operation of the enterprise within two years of retrenchment and needs to hire new employees, it should give preference to the retrenched employees.

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> Employers must provide retrenched employees with compensation equal to one month’s salary for each year of service, paid as a lump sum. For employees with less than one year of service, compensation should be calculated proportionally

4.5 Employee Representations

The Labour Act requires formation of the Health and Safety Committee, Labour Relations Committee and Collective Bargaining Committee if relevant thresholds on the number of employees are met. They do not have any role in day to day management of the enterprise and the employer need not consult or inform such a committee in its decision making. Details of the committees and their roles are set out below:

4.5.1 Health and Safety Committee

An employer employing 20 or more employees in the enterprise should form a Health and Safety Committee comprising of representatives of employees. The function of the Committee is to provide advice to the employer on issues relating to safety and health arrangements of the employees, and review safety and health policy of the employer.

4.5.2 Labour Relations Committee

An employer employing 10 or more employees in the enterprise should form a Labour Relations Committee comprising of representatives of the employees. The function of the Committee is to hold consultation for the improvement of the working environment of the enterprise and facilitate settlement of any grievances of the employees.

4.5.3 Collective Bargaining Committee

Labour Act requires formation of a Collective Bargaining Committee in an enterprise employing 10 or more employees. Collective Bargaining Committee can submit collective claims or demands in writing to the employer on issues relating to the interest of the employees. It can also enter into collective agreement or file suit in matters relating to employment. The Committee should comprise of representatives appointed for negotiation on behalf of the elected trade union or representatives nominated through mutual agreement of all the unions in the enterprise or representatives supported with the signatures of more than 60% of the employees working in the enterprise.

Employee Representation Committees

Health and Safety Committee

Labour Relations Committee

Collective Bargaining Committee

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

Income of an employee is subject to tax withholding by the employer in accordance with tax brackets provided by the Finance Act of each fiscal year. The employer is required to withhold tax on a monthly basis in proportion to the taxable income of the employee and deposit it at the relevant tax office.

Tax applicable on employment income starts from 1% for income up to NPR 500,000 to 39% for taxable income exceeding NPR 5,000,000. The applicable tax rates on the income of an individual employee and married couple prescribed for fiscal year 2022-23 are set out in Table 1.

Table 1: Applicable tax rates on the income of an individual and married couple

Tax Rate	Individual Person	Married Couple
1%	Taxable income up to **NPR 500,000**	Taxable income up to **NPR 600,000**
Next 10%	Taxable income more than **NPR 500,000 up to NPR 700,000**	Taxable income more than **NPR 600,000 up to NPR 800,000**
Next 20%	Taxable income more than **NPR 700,000 up to NPR 1,000,000**	Taxable income more than **NPR 800,000 up to NPR 1,100,000**
Next 30%	Taxable income more than **NPR 1,000,000 up to NPR 2,000,000**	Taxable income more than **NPR 1,100,000 up to NPR 2,000,000**
Next 36%	Taxable income exceeding **NPR 2,000,000 up to NPR 5,000,000**	Taxable income exceeding **NPR 2,000,000 up to NPR 5,000,000**
Next 39%	Taxable income exceeding **NPR 5,000,000**	Taxable income exceeding **NPR 5,000,000**

Social security tax of 1% of the employee's wages should be deposited in a separate revenue account. This 1% income tax is not levied for individuals who make a contribution to the Social Security Fund or are entitled to pensions.

5.2 Taxes Applicable to Businesses

Companies doing business in Nepal are required to pay taxes such as corporate income tax, value added tax, customs duty, capital gains tax, excise duty, withholding taxes (dividend, repatriation of dividend, rental tax) and local business tax.

5.2.1 Corporate Income Tax

The general corporate income tax rate is 25%. It is imposed on the taxable income of a company in an income year. A corporate tax at the rate of 30% is applicable for entities engaged in banking, insurance, telecommunication, money transfer, capital market management, securities and business. Similarly corporate tax at the rate of 20% is applicable for the transactions of cooperatives (other than tax exempt transactions) registered under Cooperative Act 2017.

5.2.2 Value Added Tax (VAT)

VAT is levied at a single rate of 13%. VAT is not levied on export of goods and services which are zero rated. Goods such as certain basic agricultural products (except for frozen green vegetables, frozen sweet corn, frozen potatoes, Coffee (Roasted, unroasted and decaffeinated beans) goods of basic needs, animal & their products, agricultural products, medical treatment & similar services, education services, and certain financial services are exempt from VAT.

5.2.3 Customs Duty

Custom Duty is governed by the Customs Act 2007 and is levied on all import and export of goods and services as per the rate specific to each item (as prescribed in tariff as per Harmonized System Code).

5.2.4 Excise Duty

Excise duty is applicable for the manufacture, import, sale or storage of products subject to excise duty. The goods subject to excise duty and the respective rates are determined as per the Excise Duty Act 2002.

5.2.5 Advance Tax on Capital Gains

Companies are required to pay advance tax on the net capital gains for the sale of shares and assets. The applicable advance tax rates for sale of shares is 10% for listed resident entities, 15% for non-listed resident entities and 25% for non-resident entities. Further, change of control taxes are also applicable if the control of an entity changes by 51% within a period of three years.

5.2.6 Withholding Taxes

An entity is required to withhold taxes on various payments. Rent is required to be withheld at the rate of 10%, dividend at 5%, service payments to non-resident entities and entities not having VAT registration at 15%, payments to service providers having VAT registration at 1.5%, sale of goods and services through an e-commerce platform at 1%. Interest paid to resident banks and financial institutions are exempt from withholding, however, withholding is applicable at 15% for interest payments to non-resident banks and financial institutions.

5.2.7 Local Business Tax

Companies are subject to an annual local level business tax which depends on the nature of business. The annual business tax is determined by the Fiscal Act of the local level (i.e.metropolitan city, municipality, rural municipality) where the business is situated.

5.2.8 Luxury Tax

Luxury tax is levied at the rate of 2% on service provided by five-star hotels and luxury resorts, as well as imported alcohol, diamonds, pearls, and high value jewellery.

Table 2: Taxes Applicable to business

Corporate Income Tax	» General tax rate of 25% » Imposed on the taxable income of a company in an income year
Value Added Tax (VAT)	» Single rate of 13% » Not levied on export of goods and services
Customs Duty	» Levied on all import and export of goods and services » As per the rate specific to each item as per Harmonized System Code
Excise Duty	» Applicable for the manufacture, import, sale or storage of products subject to excise duty » Respective rates are determined as per the Excise Duty Act 2002
Advance Tax on Capital Gains	» Companies need to pay advance tax on the net capital gains for the sale of shares and assets » Applicable advance tax rates for sale of shares: » 10% for listed resident entities, » 15% for non-listed resident entities » 25% for non-resident entities » Change of control taxes are also applicable if the control of the company changes by 50 % or more over a period of 3 years

Withholding Taxes	» Companies are required to withhold taxes on various payments at various rates such as: » 10% for Rent, » 5% or Dividend, » Service payments to non-resident entities and entities not having VAT registration at 15% » Payments to service providers having VAT registration at 1.5%, » Sale of goods and services through an e-commerce platform at 1%
Local Business Tax	» Companies are subject to an annual local level business tax » The rate of local business tax depends on the nature of business » Local business tax is determined by the Fiscal Act of each local level
Luxury Tax	» Luxury tax is levied at the rate of 2% » Applicable on services provided by five-star hotels and luxury resorts, imported alcohol, diamonds, pearls, and high value jewellery
Other taxes	» Other taxes such as health risk tax, education service tax, casino royalty etc. are applicable on specific goods and services.

5.2.9 Other taxes

Various other taxes such as health risk tax, education service tax, telecommunication service duty, phone ownership duty, infrastructure development tax, road construction duty, road repair and maintenance duty, pollution control tax, casino royalty and others are also applicable on specific goods and services.

5.3 Available Tax Credits/Incentives

Various tax incentives and rebates are offered to promote agriculture, manufacturing, infrastructure and export business. Income Tax Act provides 100% exemption in income tax in agriculture business to an individual not having any registered firm.

Income Tax Act provides tax exemption ranging from 10% to 37% on the applicable rate to special industries or production oriented industries except tobacco and liquor industries (“**Special Industries**”) and information technology industries based on employment provided. Tax exemption ranging from 70% to 100% on the applicable rate is provided to Special Industries and information technology industries established in undeveloped and underdeveloped areas for the first (10-15) years of establishment. 100% tax exemption is provided to the Special Industries based on investment amount for the first 5 years of the commencement of business and 50% for the next 3 years.

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Information Technologies industries are provided with 10% to 30% tax exemption depending on the employment provided. Further, 50% tax exemption is provided on profit on export income earned up to 2084/85 B.S. (2027/28 A.D.)

40% tax exemption is available for companies operating trolley or tram bus, construction and operation of ropeway, cable car, tunnel or sky bridge, 40% tax exemption for construction and operation of airport and 50% tax exemption for construction and operation of road, bridge or tunnel. Hydropower companies are provided with 100% income tax exemption for the first 10 years of commercial operation and 50% income tax exemption for the subsequent 5 years if the commercial operation commences before mid-April 2024.

Industries established in the Special Economic Zone (“**SEZ**”) are provided with 100% tax exemption for income and dividend during 5-10 years of establishment depending on the location of the industry and with 50% exemption in subsequent years. Further, 100% tax exemption in dividend is provided to such industries for the first 10 years and 50% exemption in subsequent 3 years.

5.4 Tax Consolidation

Tax consolidation among group companies is not available. Each company is treated as a separate entity for tax purposes.

5.5 Thin Capitalisation Rules and Other Limitations

Thin capitalization rules are not applicable in Nepal. Thin capitalization is mitigated through 15% withholding taxes applicable on interest payments to all entities other than licensed resident banks and financial institutions. Deduction of interest is only allowed if the borrowed amount is used in the same fiscal year for business purposes or used to acquire assets to be used in the same fiscal year.

5.6 Transfer Pricing

Transfer pricing rules are applicable but seldomly used in practice. Tax authority may notice to recharacterize or allocate the amounts to be included or deducted while computing the income between related parties as per arm's length. Income may be re-characterized as per type and expenses, amount or payment or may allocate cost between the associated persons on comparative business turnover basis if such costs including main office expenses incurred by a person yields benefit to its associated persons.

5.7 Anti-evasion Rules

General anti-avoidance rule is set out in section 35 of the Income Tax Act. Tax authority may re-characterize any arrangement or any part thereof made as part of tax avoidance scheme or disregard any arrangement or part that does not show any substantial effect or re-characterize any arrangement or part that does not show substantial element.

Tax evasion is considered a criminal act and is prosecuted. A person who does not pay tax without any reasonable grounds is punishable with a fine of NPR 5,000 to 30,000 or imprisonment of one to three months or both. Submission of false or misleading statements at the IRD is punishable with fine of NPR 40,000 to 160,000 or imprisonment for a term of six months to two years or both. Any obstruction or undue influence in tax administration is punishable with fine of NPR 5,000 to 20,000 or imprisonment for a term of one to three months or both.

The investigation of tax evasion can be conducted by the Department of Revenue Investigation and other authorities under the Inland Revenue Department including Large Taxpayers Office, Medium Level Taxpayers Office, and Inland Revenue Office.

6. Competition Law

6.1 Merger Control Notification

Competition Promotion and Market Protection Act 2007 restricts anti-competitive practices and prohibits mergers or amalgamation with intent to maintain monopoly and carry out restrictive trade practices. Although this law has been in force for a number of years, the Competition Board has not yet been formed. The Act also does not impose any requirements to notify or secure prior approval for any mergers or acquisitions.

Merger between two companies (but not an acquisition) has to be approved by the Office of the Company Registrar. The Office of the Company Registrar may reject a proposed merger if it will create a monopoly or will be anti-competitive.

6.1.1 Transactions covered

> "Tax evasion is a criminal offence that results in prosecution. Failing to pay taxes without valid reasons can lead to penalties of NPR 5,000 to 30,000 in fines, imprisonment for one to three months, or a combination of both.

Competition Promotion and Market Protection Act 2007 prohibits merger or amalgamation through purchase of 50% shares or take over of business of the enterprise producing similar goods and services with an intention to maintain monopoly or restrictive trade practices .

The merger or amalgamation resulting in production or distribution of more than 40% of the total production or distribution within Nepal is considered anti-competitive.

6.2 Merger Control Procedure

Merger control notification procedures are not applicable in Nepal.

6.3 Cartels

Competition Promotion and Market Protection Act 2007 prohibits an enterprise to enter into agreements individually or collectively with another enterprise which produces identical goods or services with an intention to limit or control competition. Agreements that limit or control production, distribution or marketing of goods or services or investment in technical development, limit or control the overall quantity of the production or distribution of goods or services or reduce the retail consumption quantity or quality of such goods, restrain or restrict sale or distribution of goods or services in any particular place, restrain sale or distribution of goods or services of the enterprise producing or distributing identical goods or services, prevent the entry of goods or services in the market to promote the market of particular enterprise, allocate market between the enterprises that produce or distribute goods or services, determine rotational basis or quota for transportation or distribution of goods or services and provide for other anti-competitive agreements will be void and unenforceable.

The anti-competitive practices are liable for prosecution. Such acts are punishable with a fine of NPR 1,000 to 500,000 for first instance and double of such fine amount in case of repetition. Any person or enterprise suffering loss due to an anti-competitive act is entitled to compensation.

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> A merger (not an acquisition) requires approval from the Office of the Company Registrar. They can reject it if it could result in a monopoly or be anti-competitive.

6.4 Abuse of Dominant Position

Abuse of dominant position by an enterprise in the market with an intent to control competition in the production and distribution of goods is prohibited. An enterprise is deemed to be in a dominant position if it holds either individually or jointly at least forty percent or more of annual production or distribution of goods or services within Nepal, or it can either individually or jointly produce or distribute identical goods or services to affect the relevant market or to implement its decision independently.

An entity in a dominant position is deemed to abuse such position if it prevents any goods or services produced or imported by another person or enterprise that produces or distributes identical or similar goods or services from entering into the market of its goods or services, limits or controls the production or distribution of any goods or services which is likely to decrease the market supplies for any reasonable cause or limits or controls investment to be made for the development of technology related to the production or distribution of such goods or services, fixes different prices in purchase or sale of any goods or services in the market of the same geographical area or prescribes additional terms and conditions of sale or purchase of such goods or services without reasonable cause, sets the price of the goods or services produced by it in such a manner so as to prevent competition in the market, directly or indirectly, or undertakes other prohibited acts.

The case of abuse of dominant position is subject to prosecution and is punishable with fine up to NPR 500,000 (Five hundred thousand rupees).

7. Intellectual Property

7.1 Patents

The Patent, Design and Trademark Act of 1965 governs granting and enforcement of patent rights in Nepal. In addition, Nepal is a signatory of the Paris Convention on the Protection of Industrial Property and the Agreement on Trade Related Aspects of Intellectual Property Rights. The legislative framework of the Patent, Design and Trademark Act is very basic and outdated and it is expected that the government will table a replacement legislation in the parliament soon.

Nepal follows a first-to-file system for patent rights protection. Patent means any useful invention invented through a new method or process of the construction and operation of any material or collection of materials or through any principle or formula. It provides the sole right to the inventor to exclude others from making, using or selling a registered invention. The length of protection is 7 years and is renewable twice with a total protection of maximum 21 years.

The application should include the details of inventor and owner, subject matter, drawings and sketches, method of operation, principle or formula of the patent. The Department of Industry seeks the advice of experts and follows the principle of novelty, industrial applicability and inventive steps to examine the application. Further, it may ask the inventor to give a presentation regarding the use, method of operation and utilisation of the invention. Patent is registered within 12-18 months of filing of application.

If the first application or registration of a patent is made in other countries, a document of first application or home registration certificate is required and such foreign applicant gets the protection under the Paris Convention for the Protection of Industrial Property.

Enforcement of patent rights is weak. First instance authority to hear the patent infringement case is the Department of Industry and the infringer is fined up to NPR 500,000 (~USD 3800) depending upon the gravity of the offence and the goods are confiscated. In case of dissatisfaction to the order made by the Department of Industry, an appeal can be filed in the High Court. Compensation can also be claimed by the patent owner for the loss caused by infringement.

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A registered trademark is initially protected for 7 years from the date of registration and can be renewed every 7 years thereafter. It should be brought in use within one year from registration, and the non-compliance may lead to termination of trademark.

7.2 Trade Marks

In Nepal, trademark is protected on the basis of registration and not on the basis of its use pursuant to a leading case of Repsona Publications v Madan Lamsal. Trademark includes a word, symbol, or picture or a combination thereof legally registered by any firm, company or individual in its products or services to distinguish them with the product or services of others. Nepal follows the Nice Classification system under Nice Agreement 1957.

The length of protection is 7 years from the date of registration and is renewable every 7 years. The registered trademark should be brought into use within one year from the date of registration and the non-compliance may lead to termination of trademark.

Trademarks can be registered by filing an application at the Industrial Property Section of the Department of Industry along with four specimens of the trademark. In the case of foreign national, foreign registration certificate is required. The Department carries out necessary investigation before approving the registration and if the trademark is not against the public morality and does not undermine the national interest, or is not similar to other marks. Registration of a trademark takes around 12 months of application if there is no opposition.

The first instance authority to hear the trademark infringement case is the Department of Industry and the infringer is fined up to NPR 100,000 (~USD 760) and the goods are confiscated. In case of dissatisfaction to the order made by the Department of Industry, an appeal can be filed in the High Court. Compensation can also be claimed against the infringer for the loss of trademark owner.

7.3 Industrial Design

Design can be in any form or shape of any material manufactured in any manner but is protected only after its registration. Industrial design has a protection term of 5 years which is renewable up to 2 times making the total length of protection to be 15 years.

Design can be registered by filing an application at the Department of Industry along with a description, drawings and sketches of the design and four copies of its model. The Department of Industry carries out a formality examination to determine the procedural and formal requirements of the application and invites the applicant to correct if any documents are missing. Further, the Department of Industry examines the subject matter, novelty, originality, eye appealingness and industrial applicability. If the design is not against public morality and does not undermine the national interest, industrial design is duly registered in around 12 months.

The first instance authority to hear the industrial design infringement case is the Department of Industry and the infringer is fined up to NPR 50,000 (~USD 380), and the related goods are confiscated. In case of dissatisfaction to the order made by the Department, an appeal in the High Court can be filed. Compensation can be claimed by the design owner for the loss caused by infringement.

7.4 Copyright

Copyright protects the original and intellectual work in the field of literature, art, science and others including book, pamphlet, article, thesis, drama, dramatic-music, dumb show, musical notation audio visual works, architectural design, fine arts, painting, work of sculpture, work of woodcarving, lithography, and other work relating to architecture, photographic work, work of applied art, illustration, map, plan, three-dimensional work relating to geography, and scientific article and work and computer programs. Copyright is automatically protected upon creation and registration of copyrightable work is optional. However, anyone willing to register the work can register it in the Copyright Registrar's Office.

The author of the copyrightable work has both economic and moral right and is protected throughout the life and until 50 years after the death of the author. In case of joint works, it is protected for fifty years from the death of the last surviving author. Works published anonymously or with pseudo names are protected until fifty years from the date of first publication. The copyright of works relating to applied art and photographic work is protected for twenty five years from the year of preparation of such work.

The infringement of copyright and import of unauthorised works is considered as state cases and the complaint can be filed in Nepal Police. Nepal Copyright Registrar's Office is entitled to enforce copyright through a Registrar and he hears general complaints

Table 3: Fines and Punishment for infringement of Intellectual Property

Patents	» Up to **NPR 500,000 (~USD 3800)** with goods confiscation
Trademarks	» Up to **NPR 100,000 (~USD 760)** with goods confiscation
Industrial Designs	» Up to **NPR 50,000 (~USD 380)** with goods confiscation
Copyright	» Up to **NPR 100,000 (~USD 760)** or imprisonment up to 6 months

related to copyright. The infringer is punished with a fine of a sum from maximum NPR 100,000 (~USD 760), or with imprisonment for a term not exceeding 6 months or both with double the punishment for repetition including the seizure of published material. Reasonable compensation for the loss is provided to the copyright owner. In case of dissatisfaction of order made by the Registrar, an appeal can be filed in the High Court.

7.5 Others

Software falls under computer programs and computer programs are protected by the Copyright Registrar's Office under the Copyright Act 2002. Disclosure of business secrets is a punishable criminal offence subject to private prosecution under section 294 of the Penal Code.

8. Data Protection

8.1 Applicable Regulations

Individual Privacy Act 2018 governs data protection in Nepal. In addition, the Penal Code and Electronic Transaction Act 2008 also regulate protection of data and private information. Individual Privacy Act sets the laws regarding privacy over residence, property, documents, data, correspondence and other private information. It has also set laws regarding collection, storage, processing, transfer and use of data.

8.2 Geographical Scope

The Individual Privacy Act does not specify the geographical scope of the data protection rules. However, data protection laws apply to all public and corporate entities which collect the data and private information of any individual. The Act restricts collection, storage, preservation, processing or publication of data without approval from an authorised person. However, data can be collected for the purpose of study and research with approval from the concerned individual. Data should not be used for a purpose other than which it was collected.

8.3 Role and Authority of the Data Protection Agency

There is no special agency in charge of enforcing data protection rules under the prevailing law. Violation of any provision of the Individual Privacy Act is considered as a criminal offence and may be subject to prosecution by the government or private prosecution.

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Under the current law, there is no dedicated agency responsible for enforcing data protection regulations. Any breach of the provisions outlined in the Individual Privacy Act is treated as a criminal offense and can lead to prosecution, either by the government or through private legal action www.neupanelegal.com

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