U.S. DEPARTMENT OF STATE

DIPLOMACY IN ACTION

Executive Summary

With an annual Gross Domestic Product (GDP) of roughly USD 19 billion, and total trade of USD 7.1 billion, Nepal is a small contributor to the global economy. However, its location between India and China – two of the world's fastest growing economies – makes Nepal attractive to a number of foreign investors. Nepal's natural resources have significant commercial potential. Hydroelectric power – of which Nepal has more than 80,000 MW of energy potential – could be a major source of income and help meet the region's growing energy needs. Other sectors offering significant investment opportunities include agriculture, tourism, and infrastructure.

While in theory Nepal has established a number of investment-friendly laws and regulations, in practice perennial problems remain. Laws limiting the operation of foreign banks, restrictions and limitations on repatriation of profits, currency exchange facilities constrained by meager foreign currency reserves, and the government's monopoly over certain sectors such as electricity transmission and petroleum distribution undermine foreign investment in Nepal.

Lack of a suitably trained workforce – combined with labors laws that often favor politicized employee unions – also serve to limit investment. A multitude of trade unions, usually affiliated with political parties, present significant challenges. Immigration laws and visa policies for foreign investors are cumbersome and obstructive. These challenges are exacerbated by an inefficient government bureaucracy that often takes a rent-seeking approach to foreign investment.

Political uncertainty is another challenge for foreign investors in Nepal. Ten years of Maoist insurgency from 1996 to 2006, frequent changes in the government, delays in investment reform, and the unfinished constitution-drafting process have also affected the investment climate of Nepal.

Nepal's geography also presents challenges. The country's mountainous terrain and poor infrastructure increase the cost of transportation of raw materials as well as finished goods. These costs are exacerbated by the fact that the nearest seaport is in Kolkata, India, around 900 kilometers from Kathmandu.

Despite these challenges, the country offers opportunities for investors willing to accept the inherent risk and unpredictability of doing business in Nepal.

1. Openness To, and Restrictions Upon, Foreign Investment

Since the first Constituent Assembly (CA) election in April 2008, Nepal has had five governments. The second CA election in November 2013 was deemed free, fair, and credible by international and domestic observers. The Nepali Congress emerged with a plurality of CA seats, and joined with the party with the second largest bloc of seats, the Communist Party of

Nepal – United Marxist Leninist (UML) party, to form a coalition government in February 2014. The government of Nepal (GON) has publicly reaffirmed its interest in facilitating foreign investment. Many in the business community have expressed confidence that the new coalition will provide a measure of political stability; however, contentious labor relations, bureaucratic delays and inefficiencies, concerns about corruption, and perennial power shortages create an uncertain environment for foreign and private investment.

Attitude Toward FDI

As of February 2014, there were 2,787 foreign investment projects in Nepal, worth a total of approximately USD 1.5 billion according to the Nepali Ministry of Industry. India is by far the largest foreign investor in Nepal with 581 ventures, accounting for over 39 percent of total foreign investment. Ten of the 20 largest foreign enterprises in Nepal have Indian investment. With 623 ventures, China ranked second, accounting for around 14.5 percent of total foreign investment, followed by South Korea with 203 ventures and eight percent of total foreign investment. The United States is Nepal’s fourth largest investor with 230 ventures that account for around five percent of total foreign investment.

Other Investment Policy Reviews

Reforms have allowed private investment in sectors that were previously government monopolies, such as telecommunications and civil aviation. The GON has also opened some service sectors to foreign investment. The Foreign Investment and Technology Transfer Act of 1992 abolished the minimum capital investment requirement and eliminated other significant barriers. Licensing and regulations have been simplified, and full foreign ownership is allowed in some previously restricted sectors, such as tourism. Nepali government policy also permits 51 percent foreign investment in consultancy services, such as management, accounting, engineering, and legal services. Retail chain stores and franchises with a presence in more than two countries are also restricted to 51 percent foreign ownership.

New banking institutions and a small stock exchange provide alternative sources of investment capital. On January 1, 2010, per its accession commitments to the World Trade Organization (WTO), Nepal opened the domestic banking sector to foreign banks, which are now allowed to engage in wholesale, but not retail, banking. Foreign banks operating branches in Nepal can invest only in major infrastructure projects.

The GON has opened the hydropower sector to private development, including foreign ownership. In August 2011, the Ministry of Energy announced the new Hydropower License Management Procedure, which promised to award licenses for hydropower projects above 10 MW through a competitive process. However, the process for obtaining licenses remains cumbersome, and the new policy has created uncertainty about pending applications. Unreasonable delays in the evaluation of hydropower survey license applications, foreign currency risk, friction with local community activists and trade unions, corruption, and policy uncertainty have discouraged long-term investment in this sector. The Constituent Assembly has yet to approve the Nepal Electricity Regulatory Commission Act, which is designed to unbundle the functions of the financially troubled Nepal Electricity Authority (NEA) and create an independent regulatory body. Experts consider these steps necessary to reform the NEA – which serves both as the sole purchaser of power and the largest producer, as well as the country's lead agency for building power distribution lines – and stimulate private investment in the energy sector. A small number of private-sector hydropower projects have begun operation or are in the planning stages. Projects designed for the export of electricity to India remain politically sensitive.

Foreign investors complain about complex and opaque government procedures and a working-level attitude that can be hostile. The GON has long been aware of the deficiencies in the investment climate, but has moved slowly to implement investor-friendly reforms. Efforts intended to establish a "one window policy" and streamline procedures for foreign investment have produced few results, particularly for small and medium-sized investments. In 2011, the Nepali government formed the Nepal Investment Board to facilitate investment projects worth more than USD 100 million (see below).

In addition to these challenges, foreign investors must also deal with inadequate and obscure commercial regulations, vague and changeable rules governing labor relations, a non-transparent tax system, and difficulties in obtaining long-term visas. Furthermore, there can be significant differences between the letter of the law and its implementation.

Laws/Regulations of FDI

The most significant foreign investment laws are: the Foreign Investment and Technology Transfer Act of 1992, as amended; the Foreign Investment and One Window Policy of 1992; the Foreign Exchange (Regulation) Act of 1962; the Immigration Rules of 1994; the Customs Act of 1997; the Industrial Enterprises Act of 1992; the Electricity Act of 1992; the Privatization Act of 1994; and the annual Finance Act, which outlines customs, duties, export service charges, sales, airfreight and income taxes, and other excise taxes that affect foreign investment.

The Foreign Investment and One Window Policy lists approved investment sectors, establishes currency repatriation guidelines, outlines visa regulations and arbitration guidelines, permits full foreign ownership in most sectors, and creates a "one window committee" for foreign investors. The Foreign Investment and Technology Transfer Act (FITTA) of 1992, as amended, eliminated the minimum investment requirement while opening legal, management consulting, accounting, and engineering services to foreign investment with a 51-percent ownership limit. It also clarified rules relating to business and resident visas. In general, under the FITTA, all agreements related to foreign investment are governed by Nepali law and subject to arbitration in Kathmandu under the United Nations Commission for International Trade Law rules. However, foreign law can be applicable in cases where the foreign investment exceeds approximately USD six million and where the parties make this choice clear in their agreement.

The Customs Act and the Industrial Enterprises Act, revised in 1997, established invoice-based customs valuations and eliminated many investment tax incentives, replacing them with a lower, uniform rate. The Electricity Act defines special terms and conditions for investment in hydropower development. The Privatization Act of 1994 authorizes and defines the procedures for privatization of state-owned enterprises to broaden participation of the private sector in the operation of such enterprises.

The terms and conditions of intellectual property protection are defined by the 1965 Patent, Design, and Trademark Act and the 2002 Copyright Act. The latter covers electronic audio and visual materials and subjects violators to fines and imprisonment, as well as the confiscation of unauthorized materials. Violators also have to pay compensation claimed by the copyright holder. However, it does not meet the standards for trade-related intellectual property rights required by the World Trade Organization. The Competition Law of 2004 controls anti-competitive practices, protects against monopolies, promotes fair competition, and regulates mergers and acquisitions. The Competition Law also contains special provisions for controlling black markets and misleading advertisements.

Industrial Strategy

According to the 2011 Industrial Policy of Nepal, despite past efforts to promote industry, the sector accounts for less than ten percent of the country's GDP. The economy remains dependent upon subsistence agriculture (34% of GDP) and remittances (27% of GDP). A lack of industrial growth has contributed to underemployment and unemployment, which in turn has resulted in an exodus of Nepali youth heading to foreign countries for jobs.

The Industrial Policy further states that Nepal faces political instability, industrial insecurity, hostile labor relations, energy shortages, weak industrial infrastructure, lack of skilled manpower, inability to adopt new technology, low productivity, lack of export diversification, and weak supply management. It also attributes slow growth in the industrial sector to an unfavorable business climate.

Nepal's Industrial Policy also identifies strategies for promoting foreign direct investment (FDI). In particular, it calls for a greater focus on economic diplomacy from Nepali diplomatic missions abroad and seeks to leverage non-resident Nepalis as a source of FDI. It also aims to increase new product development in Nepal by giving customs breaks to investors who need to import raw materials or foreign-made goods.

Limits on Foreign Control

All products, other than those banned or those under quantitative restrictions, may be exported freely from Nepal. Banned items include articles of archeological and religious importance, controlled wildlife and animal by-products, narcotics, explosive materials, arms and ammunition, industrial raw materials, and logs and timber. Items subject to quantitative restriction are subject to review by the GON at any time. Past examples have included food grains, seeds, and lentils. As a rule, the re-export to India of goods not of Indian origin is prohibited. Other than banned items, there are no U.S. government export controls that companies must abide by when exporting to Nepal.

Privatization Program

Privatization of state-owned entities in key sectors, including electricity, petroleum, telecommunications, aviation, and banking, has long been stalled.

Economic reforms, deregulation, privatization of businesses and industries under government control, and liberalized policies toward FDI were initiated after Nepal adopted a multi-party democratic system in the early 1990s. Sectors such as telecommunications, civil aviation, coal imports, print and electronic media, insurance, and hydropower generation were opened for private investment, both domestic and foreign.

The first privatization of a state-owned corporation was conducted in October 1992 through a cabinet decision (executive order). The Privatization Act was passed fourteen months later in January 1994. A total of 23 state-owned corporations have been privatized, liquidated, or dissolved so far. The process, however, has been static since 2003. This lack of progress is due largely to pressure from Maoist-affiliated political parties, which have led popular sentiment against privatization. After Constituent Assembly elections in 2008 and 2013, the government has been reluctant to restart stalled privatization, and there have been expressions of support for reviving moribund state-owned enterprises.

Screening of FDI

The Industrial Promotion Board (IPB), chaired by the Minister of Industry, is the primary government agency responsible for foreign investment. It is charged with coordinating economic policies, establishing guidelines for investment, approving foreign investment proposals, and determining applicable investment incentives.

In August 2011, a high-level Investment Board was created to serve as a “one window” facility for domestic and foreign investors pursuing large projects greater worth more than USD 100 million or projects in certain priority sectors. The Board, chaired by the Prime Minister, has the authority to formulate investment policies, prioritize and approve projects, facilitate the signing of agreements among different ministries, provide financial and nonfinancial facilities, procure land, monitor project progress, order government agencies to issue necessary project approvals, and bypass existing regulations in the name of investment promotion. The creation of the Board aimed to cut through bureaucratic red tape and expedite investments coming into Nepal.

Prior to the establishment of the Investment Board, the Department of Industry, under the Ministry of Industry, was designated as the "one window servicing agency" for all foreign investment. The Department of Industry still registers and classifies foreign investments and manages the income tax and duty drawbacks granted to some foreign investments. The Department of Industry remains the focal point for foreign investments of less than USD 100 million or investments outside of the priority sectors.

Under current administrative procedures, foreign investors are required to obtain licenses for manufacturing or service sector investments. Investments below USD 20 million are referred to the Department of Industry for action and are typically approved at the departmental level without the involvement of the IPB. For investments over USD 20 million, up to six ministries review the business proposal prior to consideration by the IPB.

The Department of Electricity Development, under the Ministry of Energy, is responsible for licensing all investments in hydropower projects. However, decisions on project proposals that involve foreign investment are invariably made by the Ministry of Energy itself. Similarly, the Nepal Rastra Bank, the country's central bank, is responsible for issuing licenses to operate commercial banks and financial institutions. The Insurance Board is responsible for issuing licenses to operate insurance companies. The Civil Aviation Authority of Nepal is responsible for granting operating licenses to domestic and foreign airline operators, and the Nepal Telecommunications Authority is responsible for issuing licenses for operating any type of telecommunications and information technology services.

Licensing of new investments is often time-consuming and requires legal counsel and patience. The IPB, for example, is mandated by law to make a licensing decision within 30 days of submission of an application, but this deadline is not generally met because of the provision that all necessary information must have been submitted before a decision can be made. In practice, multiple meetings are usually required before the information is deemed sufficient.

Competition Law

The Competition Law of 2004 controls anti-competitive practices, protects consumers against monopolies, promotes fair competition for the growth of trade and commerce, and includes provisions for the control of mergers and acquisitions that would create potential monopolies. The Competition Law also contains special provisions for controlling black markets and misleading advertisements.

Investment Trends

Foreign Direct Investment Statistics (as of March 2014)

- Total Number of Projects: 2,816
  - Manufacturing: 848
  - Agro-Based: 149
  - Energy-Based: 66
  - Construction: 43
  - Tourism: 755
  - Mineral: 56
  - Service: 899
- Total Project Cost: USD 3.68 billion
- Total Fixed Cost: USD 3.11 billion
- Total Foreign Investment: USD 1.52 billion
- Total Employment Generated: 188,269

Source: Foreign Investment Division, Department of Industry, Nepal

U.S. Investment in Nepal (as of March 2014)

- Total Number of Projects 237
  - Agriculture and Forestry: 13
  - Manufacturing: 60
  - Energy: 3
  - Tourism: 60
  - Service Industries: 101
- Total Project Cost: USD 255.35 million
- Total Fixed Cost: USD 230.41 million
- Total Foreign Investment: USD 94.3 million
- Total Employment Generated: 14,225

Source: Foreign Investment Division, Department of Industry, Nepal

Table 1

TABLE 1: The following chart summarizes several well-regarded indices and rankings.

Measure	**Year**	**Rank or value**	**Website Address**
TI Corruption Perceptions index	2013	116 of 177	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2013	149 of 177	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	105 of 189	http//doingbusiness.org/rankings
Global Innovation Index	2013	128 of 142	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	USD 700	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

The Foreign Investment and Technology Transfer Act of 1992 permits foreign investors to repatriate all profits and dividends, all money raised through the sale of shares, all payments of principal and interest on any foreign loans, and any amounts invested in transferring foreign technology. Foreign nationals working in local industries are also allowed to repatriate 75 percent of their income. Repatriation facilities (such as opening bank accounts or obtaining permission for remittance of foreign exchange) are available based on the recommendation of the Department of Industry, which normally provides approval of the original investment.

Despite these official policies, repatriation is difficult and not guaranteed. The relevant GON department and the NRB, which regulates foreign exchange, must approve the repatriation of funds. In most cases, approval must also be obtained from the Department of Industry. In the case of telecommunications, the Nepal Telecommunications Authority must approve the repatriation. In joint venture cases, the NRB and the Ministry of Finance must grant approval.

Foreign Exchange

Foreign exchange is regulated and is not freely available. Nepal's trade deficit in FY13 was USD 5.43 billion. This deficit is largely funded through remittance income, and Nepal maintains a foreign exchange reserve sufficient to cover 11.6 months of imports, according to the Nepal Rastra Bank. Every commercial transaction that is payable in convertible currency needs approval from the NRB under the 1962 Foreign Exchange (Regulation) Act. The Nepali rupee is pegged to the Indian rupee. The exchange rate of a U.S. Dollar against the Nepali Rupee in April 2014 was around 1 to 96, a decline from a peak exchange rate of 1 to 108 in 2013.

Remittance Policies

Foreign investors must apply to the NRB to repatriate funds from the sale of shares. For repatriation of funds connected with dividends, principal and interest on foreign loans, technology transfer fees, or expatriate salaries, the foreign investor applies first to the Department of Industry and then to the NRB. At the first stage of obtaining remittance approval, foreign investors must submit remittance requests to a commercial bank. However, final remittance approval is granted by the NRB foreign exchange department, a process that is often opaque and time-consuming.

After administrative approvals, a lengthy clearance process in the banking system also slows the transfer of foreign exchange. The experience of U.S. and other foreign investors indicates there are discrepancies between the government's stated policy of repatriation and its implementation.

In general, Nepalis are not permitted to invest outside of Nepal. Exceptions, however, can be granted on a case-by-case basis, and policing of the prohibition is weak. There are rare instances of approved direct foreign investment by Nepali nationals. During the peak of the Maoist insurgency in 2004 and 2005, a few industrial conglomerates reportedly made unauthorized investments in India and Persian Gulf countries.

3. Expropriation and Compensation

The Industrial Enterprise Act of 1992 states that "no industry shall be nationalized." To date, there have been no cases of nationalization in Nepal, nor are there any official policies that suggest official expropriation should be of concern to prospective investors. Nevertheless, companies can be sealed or confiscated if they do not pay taxes in accordance with Nepali law, and bank accounts can be frozen if there are suspicions of money laundering or other financial crimes.

4. Dispute Settlement

In disputes involving a foreign investor, the concerned parties are encouraged to settle through mediation in the presence of the Department of Industry. If the dispute cannot be resolved, cases may be settled either in a Nepali court or in another legal jurisdiction, depending on the amount of the initial investment and the procedures specified in the contract. Commercial disputes under the jurisdiction of Nepali courts and laws typically drag on for years.

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Liquidation is covered by both the Company Act and the Insolvency Act of 2006. If a company is solvent, its liquidation is covered by the Company Act. If the company is insolvent and unable to pay liabilities, or liabilities are more than assets, then its liquidation is covered by the Insolvency Act. Under the Company Act, the claimant priorities are 1) government revenue; 2) creditors; and 3) shareholders. Under the Insolvency Act, the government is equal to all other unsecured creditors. Monetary judgments are made in local currency.

Nepal is a signatory to and adheres to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards, and it has updated its legislation on dispute settlement to bring its laws into line with the requirements of that convention. The Arbitration Act of 1999 allows the enforcement of foreign arbitral awards and limits the conditions under which those awards can be challenged.

Bankruptcy

There is no specific act in Nepal that exclusively covers bankruptcy. The 2006 Insolvency Act provides for insolvency proceedings in Nepal and specifies the conditions under which such proceedings can occur. Additionally, the General Code of 1963 covers bankruptcy-related issues. Creditors, shareholders, or debenture holders can initiate insolvency proceedings against a company by filing a petition at the court.

Investment Disputes

Disputes have not been frequent. In the last ten years, there were at least two cases in which the U.S. investor claimed that the GON did not honor portions of contracts.

All real property transactions must be registered, and property holdings cannot be transferred without following established procedures. Even so, property disputes account for half of the current backlog in Nepal's overburdened court system, and cases can take years to settle. Moreover, laws and regulations regarding property registration, ownership and transfer are unclear, and interpretation can vary from case to case.

International Arbitration

In cases where contracts provide for the settlement of disputes through arbitration, disputes will be settled according to the procedures described in the contract. If no procedures are specified, the dispute will be settled according to the Arbitration Act of 1999.

In the event of a dispute with a foreign investor, the concerned parties are encouraged to settle it through mediation in the presence of the Department of Industry. If the dispute cannot be settled, cases involving investments of less than USD five million are referred to arbitration in Nepal in accordance with the Arbitration Rules of the United Nations Commission for International Trade Law. For investments that exceed this amount, the GON will permit stipulation of legal jurisdiction other than Nepal in shareholder agreements and contracts.

ICSID Convention and New York Convention

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Duration of Dispute Resolution

Under insolvency proceedings, except when otherwise provided for in the agreement, the arbitrator is required to pronounce the decision within 120 days from the date of submission of documents. If the issue requiring arbitration is found to be inextricably linked with another issue on which the arbitrator cannot pronounce a decision, the concerned party may file a complaint to the Court within 35 days from the date of notice from the arbitrator. Despite these regulations, commercial disputes under the jurisdiction of the Nepali courts and laws typically drag on for years.

5. Performance Requirements and Investment Incentives

The Nepal Laws Revision Act of 2000 eliminated most tax incentives; however, exports are still favored, as is investment in certain "priority" industries, such as tourism, civil aviation, and hydropower. There is no discrimination against foreign investors with respect to export/import policies or non-tariff barriers. There is no local content or export performance requirement. There is no requirement that foreign investors partner with Nepalis, that foreign investors’ share of foreign equity be reduced over time, or that technology be transferred. However, to promote joint ventures with Nepali nationals, foreign investment in the service sectors is limited, ranging from 51 to 80 percent. Foreign investment in cottage industries is not allowed.

WTO/TRIMS

Nepal became a member of the World Trade Organization (WTO) on April 23, 2004. During its accession, Nepal made commitments on Trade Related Investment Measures (TRIMs), including for agriculture, goods, and services. The December 2005 Hong Kong Ministerial Declaration allowed least developed countries (LDCs) to maintain on a temporary basis (five years, renewable subject to review) measures that reduce their obligations under the TRIMs Agreement. The Ministerial Declaration allowed Nepal the flexibility to implement provisions such as local content requirement on foreign investment. Although Nepal’s investment regime is liberalized and there are no provisions for local content requirement (except for the retail banking sector), this provision permits future industrial policy changes in Nepal.

Investment Incentives

The GON offers tax incentives to encourage industries to locate outside the Kathmandu Valley. These incentives aim to reduce pollution and overpopulation in the Valley and to encourage development in poorer parts of the country.

Profits from exports are taxed at 20 percent. Customs, value added tax (VAT), and excise duties on raw materials used in the production of export items are supposed to be reimbursed within 60 days. In practice, however, these duty paybacks are often significantly delayed. Although income in certain priority industries, such as garments, carpets, and jewelry, used to be taxed at a concessional rate of 10 percent, the Income Tax Act 2002 removed most of these concessions.

The Electricity Act of 1992 governs foreign investments in hydropower generation. The Act exempts developers from income tax for the first 15 years of a project's operation and provides a flat one-percent customs rate on all imported construction materials, equipment, and spare parts, provided that such goods are not manufactured in Nepal.

Foreign investors are not required to disclose proprietary information to government agencies as part of the regulatory approval process. There are no restrictions on participation by foreign firms in government-sponsored research and development programs; however, depending upon the nature of the job and expertise required, government agencies sometimes limit such participation to Nepali nationals.

Research and Development

Nepal has limited funding and facilities for research and development. The Nepal Academy of Science and Technology, an autonomous apex body, is charged with advancing science and technology, preserving and furthering modernization of indigenous technologies, and promoting research in science and technology. The Nepal Agricultural Research Council is another autonomous organization that conducts agricultural research. The Department of Food Technology and Quality Control under the Ministry of Agriculture Development primarily focuses on maintaining safety and quality of food and feed products in the country.

Additionally, the Mines & Minerals Act of 1985, the Petroleum Act of 1983, and the Foreign Investment and Technology Transfer Act of 1992 allowed license for metals, minerals, and petroleum exploration work in the country. A number of foreign investment projects are under operation and are engaged in exploration of metals and minerals.

Performance Requirements

Nepali laws are either silent or unclear on performance requirements. Additionally, the fee for licenses, in most cases, remains low. As a result, some speculative investors obtain licenses with the goal of selling them later for a higher price. Such investors sometimes hold licenses for years without performing any project work; this trend is particularly prevalent in the hydropower, mining, and petroleum exploration sectors. Some promising projects have made little progress – or none at all – due to speculative license purchases. As a result, in recent years the GON has increased license fees and changed regulations in order to dissuade speculative license applications. Additionally, the Ministry of Energy cancelled more than 1,550 licenses, including those of major foreign investors, where license holders had not initiated any project work for years after getting the license. Similarly, the Ministry of Industry issued ultimatums to oil companies holding exploration licenses to clarify their status and possibly terminate their permits if they couldn't justify the slow progress of their operations.

Data Storage

Nepal has no laws relating to storage of data for law enforcement or privacy purposes.

6. Right to Private Ownership and Establishment

Foreigners are free to establish and own businesses and engage in all forms of business activity with the exception of certain restricted sectors, such as retail banking, defense industries, and security printing. Former public monopolies in banking, insurance, airline services, telecommunications, and trade have been eliminated, and remaining restrictions on foreign businesses are being gradually scaled back. One remaining restriction is that foreigners are not permitted to engage in the sale of goods without having a manufacturing operation in Nepal. Anti-competitive practices – including cartel formation, price fixing, and business monopolies – are prohibited under the Competition Promotion and Market Protection Act. The law was drafted through a joint initiative of the private sector and the then Ministry of Industry, Commerce, and Supplies but has been largely ineffective due to lack of enforcement mechanisms.

7. Protection of Property Rights

Protection of intellectual property rights is inadequate in Nepal. In accordance with its commitments on accession to the World Trade Organization in 2004, Nepal must enact new legislation on trade-related intellectual property rights to bring the country into compliance with international norms. There is no exclusive act for the protection of intellectual property. The Copyright Registrar's Office within the Ministry of Culture, Tourism and Civil Aviation administers the Copyright Act of 2002, which covers most modern forms of authorship and provides adequate periods of protection. However, enforcement is weak, and most of the software and audio and visual recordings sold in Nepal are pirated. The Industrial Property Offices within the Ministry of Industry administers patents and trademarks. Nepal became a member of World Intellectual Property Organization (WIPO) convention in 1997, but has not yet signed the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty.

Nepal Copyright Registrar's Office
Ministry of Culture, Tourism and Civil Aviation
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For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Embassy point of contact: Economic/Commercial Officer (as of June 30, 2014): Todd Jungenberg - JungenbergTH@state.gov
LES Economic Specialist: Tapas Gupta - GuptaTK@state.gov

Real Property

The right to property is recognized in the 2007 Interim Constitution of Nepal as a fundamental right. The State does not, except in the public interest, create any encumbrance on the property of any person or business, including foreign investors. Nepali law treats a business or organization as a separate legal entity, and ownership of any real property by such an entity is treated the same as property owned by an individual. Nepal is a signatory of the 1883 Paris Convention for the Protection of Industrial Property and the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights. However, patent registration under the Patent, Design, and Trademark Act does not provide automatic protection to foreign trademarks and designs. Similarly, Nepal does not automatically recognize patents awarded by other nations. Trademarks must be registered in Nepal to receive protection. Once registered, trademarks are protected for a period of seven years.

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LES Economic Specialist: Tapas Gupta - GuptaTK@state.gov

Local lawyers list: http://nepal.usembassy.gov/service/emergency-services/legal-assistance.html

8. Transparency of the Regulatory System

Foreign investors in Nepal must deal with a largely non-transparent legal system in which basic legal procedures are neither quick nor routine. The bureaucracy can be reluctant to accept legal precedents, and businesses are often forced to re-litigate issues that had been previously settled. Additionally, limitations on foreign ownership in some sectors create additional hurdles and red tape for foreign investors.

Foreign investors frequently complain about bureaucratic delays and lack of transparency in procuring investment licenses. Government procurement is another area noted for lack of regulation and transparency. The Financial Procedures Rules of 2007, which governs most of the government's procurement, forces government agencies to choose the lowest-cost bidder. Both foreign and domestic companies often complain about that this policy ignores quality by focusing solely on cost.

Labor, health, and safety laws are unevenly enforced. Many companies report that the process of terminating unsatisfactory employees is cumbersome and that protective labor laws make it difficult to bring skilled foreign specialists, such as pilots, engineers, and architects, into Nepal.

9. Efficient Capital Markets and Portfolio Investment

Credit is generally allocated on market terms, although special credit arrangements exist for farmers and rural producers through the Agricultural Development Bank of Nepal. Foreign-owned companies can obtain loans on the local market. The private sector has access to a variety of credit and investment instruments. These include public stock and direct loans from finance companies and joint venture commercial banks.

Legal, regulatory, and accounting systems are neither fully transparent nor consistent with international norms. Though auditing is mandatory, professional accounting standards are low, and many practitioners are poorly trained. Under these circumstances, published financial reports are often unreliable, and investors often rely on general business reputations, except in the few cases in which companies utilize international accounting standards.

Money and Banking System, Hostile Takeovers

The Nepali banking system is relatively small, and some institutions are plagued by bad loans. Banking system assets totaled approximately USD 17.2 billion as of February 2014, and deposits equaled USD 13.49 billion. As of January 2014, 3.7 percent of the total asset base was estimated as non-performing. Foreign commercial lending is scarce and expensive. Currently, there are no resident or non-resident foreign commercial banks that have standing credit limits for loans of a maturity of more than one year. There is no regulatory system to encourage and facilitate portfolio investment in the industrial sector. Lack of transparency or regular reporting of reliable corporate information also presents problems for potential foreign investors.

Considering the size of its economy, Nepal has a large number of banks and financial institutions (BFIs).

Nepal has no reported cases of hostile takeovers in the banking system. However, in order to effectively regulate the sector, the Nepal Rastra Bank (NRB) promoted mergers in the financial sector and published merger bylaws in May 2011. Since then, a total of 43 BFIs have merged into 18 institutions, two commercial banks, and 41 BFIs. Another 25 BFIs have received permission from the NRB to start the merger process. As of January 2014, there are 31 commercial banks, 87 development banks, and 59 finance companies registered with the NRB. This total does not include cooperatives, which in many respects function as BFIs.

There are no legal provisions to defend against hostile takeovers.

10. Competition from State-Owned Enterprises

There are 37 state-owned enterprises (SOEs) in Nepal, including Nepal Telecom, Nepal Airlines Corporation, and the Nepal Electricity Authority. Since 1993, Nepal has initiated numerous market policy and regulatory reforms in an effort to open eligible government-controlled sectors to domestic and foreign private investment. These efforts have had mixed results. The majority of private investment has been made in manufacturing and tourism, sectors where there is either little government interest or the existing state-owned enterprises perform poorly. Although some government-controlled sectors are open for foreign investment, most are not and remain under state monopoly.

Corporate governance of SOEs is poor, and executive positions have traditionally been filled by people connected to politically appointed government ministers. Board seats are generally allocated to senior government officials, and the SOEs are often required to consult with government officials before making any major business decisions. However, in late 2011, the then-Prime Minister issued an executive order demanding a competitive and merit-based selection process. This process had some success but encountered resistance within some Ministries.

The Telecommunications Act of 1997 and other subsequent legislation opened the sector to private investment, but the state-owned Nepal Telecommunications Company sometimes uses its influence to deny certain privileges (such as frequency licenses) to private sector telecom service operators and indirectly block them from expanding their services. The Privatization Act of 1994 generally does not discriminate between national and foreign investors; however, in cases where proposals from two or more investors are identical, the government gives priority to Nepali investors.

OECD Guidelines on Corporate Governance of SOEs

The World Bank in Nepal assesses corporate governance benchmarks (both law and practice) against the OECD Principles of Corporate Governance, focusing on companies listed on the stock market. Awareness of the importance of corporate governance is growing. The NRB has introduced higher corporate governance standards for banks and other financial institutions. Under the OECD Principles of Corporate Governance, the World Bank recommended in 2011 that the GON strengthen capital market institutions and overhaul the Office of the Company Registrar (OCR). These reforms would better protect shareholders' rights by ensuring that a

company's Annual General Meeting focused on good governance rather than rent-seeking, enhancing transparency by mandating listing of all companies follow national standards for accounting and auditing, increasing the effectiveness and objectivity of regulatory boards, and penalizing willful defaulters as part of broader creditor rights reform.
Although some of these reforms have been initiated – e.g. strengthening of capital markets – many have not been finalized, and no reforms have been instituted at the OCR.

Sovereign Wealth Funds

The GON has created a few funds to set aside a pool of money for investment purposes that will benefit the country's economy and citizens. The funding for these sovereign wealth funds mostly comes from multilateral and bilateral grants, aids, or loans. Some funds have also been created by public debt instruments.

The Clean Energy Development Bank has established a development fund of approximately USD three million for funding feasibility studies of small- and medium-sized hydropower projects. While the "Hydro Development Fund" was intended to fill the early-stage financing gap for the development of small- and medium-sized hydropower plants, its limited capital has reduced its ability to function effectively and it is now largely defunct.

The Hydroelectric Investment and Development Company, which started operations in July 2012, was developed to finance power projects above 25 MW capacity. The World Bank allocated USD 35 million for the fund and the International Finance Corporation provided another USD 25 million. However, these funds have not been used for project financing so far.

The Employees' Provident Fund, a parastatal organization of the Nepali Government responsible for managing government pensions, also provides long-term loans to infrastructure development projects.

11. Corporate Social Responsibility

The level of Corporate Social Responsibility (CSR) in the business community is generally low, except among trade and industry association leaders who have benefitted from studying abroad or exposure to multinational company practices. Few companies are listed on the stock exchange, and there is little shareholder pressure on companies to act in a socially responsible manner. There are no laws or government policies promoting CSR.

Companies that are most visibly engaged in CSR activities are the few multinational companies operating in Nepal. Nepali businesses are mostly small- and medium-sized enterprises owned by individuals or one of the small number of business houses. The CSR activities of these companies are driven by the owners' personal convictions and interests rather than by corporate norms or standards.

OECD Guidelines for Multinational Enterprises

Few multinational enterprises operate in Nepal. Except for some foreign joint ventures, most multinationals are either represented in Nepal through dealers, representatives, or franchisees. Nepal is not a member country of OECD, and guidelines for multinational enterprises are covered under various rules and policies of the government. Foreign investment projects or joint ventures are encouraged by their regulating agency to follow OECD Guidelines for Multinational Enterprises for responsible business conduct.

12. Political Violence

The signing of the Comprehensive Peace Agreement in November 2006 marked the official end of Nepal's 10-year Maoist insurgency. The Department of State lifted its Travel Warning for Nepal on December 6, 2011, reflecting improvements in country conditions. Nonetheless, criminal violence, sometimes conducted under the guise of political activism, continued to be a problem. Additionally, bandhs (general strikes) called by political parties and other agitating groups sometimes halt transport and shut down businesses, sometimes nationwide. In November 2013, one person was killed and several injured in pre-election violence, including petrol-bomb attacks on buses. Americans and other Westerners were not targets of the violence, which was mainly staged by a coalition of fringe parties opposed to the elections.

Business owners, especially those in the Tarai, the southern plains bordering India, are have been the target of extortion and kidnapping by political party activists and criminal groups aligned with them. In a bid to extort ransom, armed groups have targeted business entrepreneurs and local government employees, but generally not foreigners. Most of these criminal acts took place in the Central and Eastern Tarai regions, and have decreased significantly in recent years.

U.S. citizens who travel to or reside in Nepal are urged to register with the Consular Section of the Embassy by accessing the Department of State's travel registration site at https://step.state.gov/step/ or by personal appearance at the Consular Section, located at the U.S. Embassy, Maharajgunj, Kathmandu. The Consular Section can provide updated information on travel and security, and can be reached through the Embassy switchboard at (977) (1) 423-4500, by fax at (977) (1) 400-7281, by email at consktm@state.gov, or online at http://nepal.usembassy.gov

U.S. citizens also should consult the Department of State's Consular Information Sheet for Nepal and Worldwide Caution Public Announcement via the Internet on the Department of State's home page at http://travel.state.gov or by calling 1-888-407-4747 toll free in the United States and Canada, or, for callers outside the United States and Canada, a regular toll line at 1-202-501-4444. These numbers are available from 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday (except U.S. federal holidays).

13. Corruption

Corruption, including bribery, raises the costs and risks of doing business. Corruption has a corrosive impact on both market opportunities overseas for U.S. companies and the broader business climate. It also deters international investment, stifles economic growth and development, distorts prices, and undermines the rule of law. According to the Corruption

Perception Index 2013 released by Transparency International (TI) in December 2013, Nepal ranked 116th among 177 countries and fell in the range of “highly corrupt” countries.

It is important for U.S. companies, irrespective of their size, to assess the business climate in the relevant market in which they will be operating or investing, and to have an effective compliance program or measures to prevent and detect corruption, including foreign bribery. U.S. individuals and firms operating or investing in foreign markets should take the time to become familiar with the relevant anti-corruption laws of both the foreign country and the United States in order to properly comply with them and, when appropriate, they should seek the advice of legal counsel.

The U.S. Government seeks to level the global playing field for U.S. businesses by encouraging other countries to take steps to criminalize their own companies’ acts of corruption, including bribery of foreign public officials, by requiring them to uphold their obligations under relevant international conventions. A U.S. firm that believes a competitor is seeking to use bribery of a foreign public official to secure a contract should bring this to the attention of appropriate U.S. agencies, as noted below.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

OECD Antibribery Convention: The OECD Antibribery Convention entered into force in February 1999. The Convention obligates the Parties to criminalize bribery of foreign public officials in the conduct of international business. Nepal is not a party to the OECD Convention.

UN Convention: The UN Anticorruption Convention entered into force on December 14, 2005.The UN Convention requires countries to establish criminal and other offenses to cover a wide range of acts of corruption, including bribery and solicitation, embezzlement, trading in influence to the concealment and laundering of the proceeds of corruption. The Convention contains transnational business bribery provisions that are functionally similar to those in the OECD Antibribery Convention and contains provisions on private sector auditing and books and records requirements. Other provisions address matters such as prevention, international cooperation, and asset recovery. Nepal is a signatory to the UN Convention, but has not ratified it yet.

14. Bilateral Investment Agreements

Nepal does not have a bilateral investment treaty with the United States. Nepal has bilateral investment treaties with the United Kingdom, Finland, France, Germany, India, and Mauritius. Nepal signed a Bilateral Investment Promotion and Protection Agreement (BIPPA) with India in October 2011, but the agreement has not yet entered into force.

B***ilateral Taxation Treaties***

Nepal does not have a bilateral taxation treaty with the United States. Nepal has signed bilateral taxation treaties with India, Qatar, China, Austria, South Korea, Mauritius, Norway, Pakistan, Sri Lanka, and Thailand.

15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) is free to operate in Nepal without restriction. Services include direct loans and loan guarantees, political risk insurance, and investment funds. Nepal is also a member of the Multilateral Investment Guarantee Agency.

The Export-Import Bank of the United States (Ex-Im Bank) is the U.S. Government's official export credit agency, whose mission is to assist in financing the export of U.S. goods and services to international markets. Ex-Im Bank provides export credit insurance, loan guarantees and project and structured finance for U.S. exporters and foreign buyers of U.S. goods and services.

16. Labor

The most distinguishing features of labor in Nepal are the shortage of skilled, educated workers, the role played by militant political party-affiliated unions, and laws and regulations that are generally not business friendly. Politicized unions stage frequent strikes, often unrelated to working conditions at the individual firm. Under Nepali law, it is difficult to dismiss employees.

According to the Nepal Living Standards Survey (NLSS-III 2010-2011), the overall literacy rate is 56.6 percent, with literacy rate for males at 71.6 percent and 44.5 percent for females. Vocational and technical training are poorly developed, and the national system of higher education is overwhelmed by high enrollment and inadequate resources. Many secondary school and college graduates are unable to find jobs commensurate with their education. Hiring non-Nepali workers is not, in most cases, a viable option as the employment of foreigners is restricted. The Department of Immigration must approve the employment of foreigners for all positions, except the most senior ones.

The Constitution provides for the freedom to establish and join unions and associations. It permits restrictions on unions only in cases of subversion, sedition, or similar conditions. Labor laws permit strikes, except by employees in essential services such as water supply, electricity, and telecommunications. Sixty percent of a union’s membership must vote in favor of a strike for it to be legal, though this law is frequently ignored. The laws also empower the government to halt a strike or suspend a union’s activities if the union disturbs the peace or adversely affect the nation's economic interests, though, in practice, this is rarely done.

Total union participation is estimated at around one million, or about 10 percent of the total workforce, much of which is employed in informal sectors. The three largest trade unions are affiliated with political parties. The Maoist-affiliated All Nepal Trade Union Federation (ANTUF) is the most active and has been aggressive in its efforts to control industries and business sectors. The ANTUF’s organizing tactics have led in the past to violent clashes with other trade unions. The ANTUF itself split into two unions after the Communist Party of Nepal-Maoist (CPN-M) broke away from the Unified Communist Party of Nepal (Maoist) (UCPN(M)) in June 2012.

The ANTUF and its splinter group, the ANTUF-R, are aggressive in their defense of members and frequently engage in disputes with management. A U.S. company in Nepal was shut down twice in 2013 and 2014 by workers associated with the CPN-M-affiliated ANTUF-R. On the first occasion, company management had initiated administrative action against employees who were absent from work without prior approval. Protesting the management action, workers associated with ANTUF-R vandalized the company's office. Company management later terminated the six workers involved in vandalizing the office. After repeated protests in March 2014, all 17 workers associated with ANTUF-R quit their jobs.

A fast food chain in Kathmandu shut down its two restaurants in August 2012 after workers associated with the CPN-M assaulted the human resources manager and other senior managers. The restaurants reopened in September 2012 after company management and the All Nepal Hotel and Restaurant Workers´ Union-Revolutionary (ANHWU-R), which is also affiliated with the CPN-M, reached an agreement. Similarly in May 2011, Maoist-affiliated labor activists stormed and burned down the facilities of an Indian hydropower company that was developing a 300 MW hydropower project on the upper Karnali river. As another example, an Indian readymade garment company announced the permanent closure of its Nepal operations in August 2011, citing labor problems after union members connected with ANTUF-R held 38 management staff hostage in the factory for over 36 hours. The detained staff members were later released by the district administration with assistance from the police.

Much of the labor union agitation is conducted in violation of valid contracts and existing laws, and unions are rarely held accountable for their actions. Unions, particularly the ANTUF-R, have targeted joint ventures involving foreign investment and hotels.

17. Foreign Trade Zones/Free Ports

Nepal has no Foreign Trade Zones or Free Trade Zones, but is considering establishing Special Economic Zones (SEZ). Under draft legislation, an industry exporting 75 percent or more of its products would be entitled to apply for a space in a SEZ and import raw materials and capital goods without paying custom duties, excise taxes, or sales taxes. An industry located in a SEZ would be exempt from paying income tax for five years from the date of commencement of commercial operations; after five years, the company would pay 50 percent of the normal tax. Additionally, such companies would be exempt from the value added tax for imported machinery, equipment, spare parts, and raw materials.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

TABLE 2: Key Macroeconomic data, U.S. FDI in host country/economy

	Host Country Statistical source*		USG or international statistical source		USG or international Source of data (Source of Data: BEA; IMF; Eurostat; UNCTAD, Other)
Economic Data	Year	Amount	Year	Amount	

Host Country Gross Domestic Product (GDP) (*Millions U.S. Dollars)*	(FY2013)	19,178	2012	18,960	http://www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (*Millions U.S. Dollars, stock positions)*	1981 to present	94	1999 to present	42*	(BEA) click selections to reach. *USG data on Nepal is not available for years prior to 1999
Host country's FDI in the United States	Data Not Available	Data Not Available	Data Not Available	Data Not Available	(BEA) click selections to reach
Total inbound stock of FDI as % host GDP (***calculate)***	(2013)	1.54%	Data Not Available	Data Not Available	

* 1. GDP – Nepal Rastra Bank (Central Bank) 2. FDI – Department of Industry

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