

HIGHLIGHTS

Industrial Enterprise Rules





Abbreviation

CSR	Corporate Social Responsibility
DOI	Department of Industry
GoN	Government of Nepal
IEA	Industrial Enterprises Act, 2076
MOF	Ministry of Finance
MOI	Ministry of Industry
OSSC	One Stop Service Center
SI	Sick Industry

HIGHLIGHTS

Highlights Industrial Enterprise Rules 2078

Effective Date

Industrial Enterprise Rules 2078 was enacted by GON under section 67 of the Industrial Enterprise Act 2076 (IEA). These Rules have become effective from 21 Chaitra 2078 (4 April 2022).

Background

The IEA was enacted to develop a healthy, competitive and production oriented economy with a focus on export promotion and import management to increase domestic production and employment opportunities, facilitate industries and create investment friendly environment by optimum utilization of natural, physical and human resource.

Registration of Industries (Rule 3)

Any person willing to set up an industry can do so by registering under the IEA. For registration, an application in the format as prescribed in Annexure 1 along with the details: project report (in the prescribed format of Annexure 2) and documents mentioned in Rule 3(1) shall be submitted to DOI.

Issuance of Registration Certificate (Rule 4)

DOI, after examination of submitted application/ documents and if satisfied, shall issue a registration certificate in the format as specified in Annexure 3 mentioning the time limit for commencement of business or commercial production or transaction.

[PKF TRU comment: The previous provision of providing a registration certificate within 15 days of receipt of the complete documents has now been removed. Also, the previous requirement to provide notice within 7 days in case of refusal stating the reason for refusal has now been removed.]

Complaints may be filed (Rule 5) **NEW RULE**

Any applicant not satisfied with the decision of refusal of registration by DOI may file a complaint under section 6(1) of IEA in the format as specified in Annexure 5 and as per Annexure 6 in case of refusal by province level registration authority to the concerned ministry along with the documents specified in sub-Rule 2.

Permission to be obtained from the Board (Rule 6)

For the registration of specific industries prescribed in section 8(1) of the IEA, permission from the Board (i.e. Industry and Investment Promotion Board as per section 20 of the IEA) is required after an application (as prescribed in Annexure 7) has been submitted along with documents mentioned in Rule 3. Permission shall be given in the format specified in Annexure 8 if the board decides to give the permission upon receipt of the application and documents required.

Extension of commercial production (Rule 7)

Where an industry cannot commence commercial production or operation or transaction within the period prescribed in the registration certificate, an application for extension with justification shall be submitted as per the format specified in Annexure 9 along with the prescribed fee (ranging from NPR 15,000 to 150,000 depending on Industry type) and DOI may grant an extension up to a maximum period of one year at a time.

[PKF TRU comment: previously fees for extension were not prescribed and the introduction of the word “at a time” may mean that extension can be applied more than once in justifiable circumstances].

Prior Permission for Relocation of Industry (Rule 8)

If an industry wants to relocate the industry an application along with required documents shall be submitted for approval from DOI in the format specified in Annexure 10.

[PKF TRU comment: Earlier restrictive provision of not approving the relocation of industries which have obtained facilities in the form of land exceeding the threshold as per prevailing laws and to those industries established at SEZs has now been removed]

Permission to be obtained for Enhancement of Fixed Capital/Capacity or Addition/Changes in Objective (Rule 9)

The industry shall apply in the format prescribed in Annexure 12 along with the documents specified in Rule 9(1) for permission of addition or change in the capital, installed capacity and objectives as per section 12(1) of IEA. DOI may grant permission after an inspection of the documents submitted and a site inspection visit (if required) of the industry.

Submission of Annual Returns (Rule 10)

Every industry after commencement of its commercial production or transaction shall submit the following returns within six months from the end of the fiscal year:

- Audit report
- Tax clearance certificate of the latest fiscal year.
- Updated return prepared as per Annexure 13

DOI shall update and inform the record of the above returns to the concerned industry within 7 days of receipt of such documents. Above returns can also be submitted through an electronic medium in use by DOI.

Inform DOI of Closure of industry (Rule 11)

The industry shall inform DOI of the closure of the industry or suspension of its commercial production and operations in the format as per Annexure 14 of the Rules.

Cancellation of Registration (Rule 12)

Similarly, where an industry wants to cancel its registration as per section 15(1) of IEA, it shall make an application in the format prescribed in Annexure 15 with the documents prescribed in Sub Rule 1.

DOI shall give order to applicant industry to publish a notice in national daily newspaper for a written claim, if any along with supporting evidence within 35 days. The registration is cancelled and struck off from record within 7 days after settlement of any claims established by DOI after publication of a 35-day notice in a national daily. However, if there is case on unsettled liability or any pending litigation against Industry for claim, registration shall not be cancelled unless such liability or pending case is settled.

Application to be submitted for obtaining documents or records (Rule 13) **NEW RULE**

As per section 16(2), any industry or its owner requiring documents or records of such industry maintained at DOI shall give an application in the format specified in Annexure 16. DOI shall provide a copy of such requested documents with due verification after charging applicable fees.

Cooperative Society may Register an Industry (Rule 14) **NEW RULE**

Cooperative Society registered and in operation as per the prevailing law and falling under the category of cooperative society listed in sub rule 1 may register as an industry as per section 17(5) of IEA within the purview of the IEA, IE Rules and its bylaws.

However, cooperatives conducting saving and credit/loan business cannot register an industry.

Application to be given for Classification/Update (Rule 15) **NEW RULE**

If any industry registered prior to the commencement of IEA and wants to classify itself under the industry category as per IEA, an application can be filed by such industries in the format specified in Annexure 17 along with documents and details mentioned in sub rule 1.

DOI shall give notice of updated new category of industry within 7 days of application if it is satisfied that the industry is eligible for the applied category after assessment of necessary documents and details.

Facility of Export Loan to Women Entrepreneurs (Rule 17)

As per section 27(4) of IEA, the following export loan facility may be provided to women entrepreneurs based on their financial status through banking channel:

- For micro industries up to NPR 500,000.
- For domestic industries up to NPR 1.5 million.
- For Small Industries up to NPR 2 million.

- For Medium Industries up to NPR 3 million.
- For Large Industries up to NPR 5 million.

However, for availing above facility, such an enterprise should have exported at least 30% of its net production during the previous year.

Additional Facilities and Concessions (Rule 18) **NEW RULE**

Additional facilities and concessions may be provided (through publishing in Nepal Gazette) to the industries; i) employing at least fifty percent of its total employee as women or disabled persons, ii) consuming at least eighty percent domestic raw materials and iii) industry based on green energy.

Approval for import (Rule 20)

Industries established with foreign investment can apply to DOI for the import of goods manufactured by its foreign parent company, specifying the nature of the product, quantity, time period, information on the development of its new product, market promotion and contribution from such product.

DOI can provide approval for a maximum period of one year on fulfillment of the following conditions:

- Product to be imported not being imported and sold by any other person, firm and company in Nepali market.
- Cannot import more than fifty percent of the product mentioned in the scheme approved for testing purposes.
- The imported product can be sold for testing purposes only.

However, the industry falling under Annexure 1 of IEA shall not be permitted to import goods produced by its parent company.

The industry should submit monthly returns on imported goods and its testing distribution detail to DOI.

Simplification for purchase/availability of land (Rule 21)

Based on the written request from the industry, DOI can facilitate in acquisition of the required land for the following industries:

- National priority industries;
- Industries exporting at least 60% of their production;
- Medium and large scale industries established in very undeveloped, undeveloped and underdeveloped areas;
- Industries providing direct employment to at least 500 people;
- Industries with a fixed capital investment of NPR 10 billion or more; and
- Medium and large industries utilizing more than 50% local raw material or in the case of imported raw material, value addition of at least 50%.

Based on the request received as per Rule 21(1), DOI if deems necessary shall facilitate such industries in obtaining required lands through OSSC.

Security to be provided (Rule 25)

To maintain the peace and security in industrial area, SEZ, industrial corridor, industrial cluster, industrial enterprises, GoN may depute security personnel as per the necessity.

If any industry demands additional security owing to the difficulty in operation due to security reasons, GoN can allocate an additional security force. GoN can also allocate a separate security force on request for the following purpose:

- For industrial fair, exhibition and other industrial programs.
- To protect industries from property damage, fire and burglary during the period of strike and lock out.
- To protect industrial areas from possible security threats.

GoN can provide additional security to industries with an investment in excess of NPR 2 billion or employing directly more than 100 employees as per Rule 25(4) on the recommendation of the District Security Committee, provided that the costs are borne by the industry. GoN may fix certain parameters and conditions while providing such additional security.

One Stop Service Center (OSSC) (Rule 26)

For the purpose of providing timely services mentioned in section 37(1) of the IEA, OSSC shall be in operation in DOI. For its operation and management, OSSC shall have different units such as; Foreign Investment and Technology Transfer, Industry Registration and Permission, Environment & Technology, Administration & Facility, Legal, Foreign Exchange Simplification, Customs/Tax & Duty Drawback, Visa Simplification, Land Simplification, Infrastructure Simplification, Company Registrar and Labor & Commercial Safety.

Creation and operation of Website and Portal by OSSC (Rule 29) **NEW RULE**

For providing various services from receiving application to communicating progress and decision on application through electronic medium, OSSC will be implementing website and portal for easy process. Also, OSSC shall maintain a digital record of physical documents received.

Sick Industries (Rule 32)

GoN can identify and categorize an industry as 'Sick Industry' on the basis of any of following conditions:

- Industry operating in loss for three consecutive years leading to decrease in equity by more than 30%.
- Incapability to pay the principal and the interest of the loan as per loan agreement.
- Loan exceeding the capital.
- Listed industries with market price per share lower than its face value.
- Due to any other reason industry falling to status of industry under section 39(1).

Methods of identifying Sick Industries (Rule 33)

If any industry wants to declare itself as a Sick Industry as per section 39(1) of IEA and as per criteria mentioned in Rule 32 it can apply for categorization as Sick Industry to the Ministry of Industries (MOI) with the detailed additional capital requirement for operation and business plans in the format specified in Annexure 20.

The concerned authority, after an inquiry and field inspection (if required), shall recommend to the MOI to categorize the industry as sick. The MOI with consent of MOF and other related ministries will recommend to the GoN to categorize such entity as a Sick Industry. GoN can arrange for benefits and facilities to revive such sick industries.

Industries declared as sick can be operated and managed by cooperative society complying the conditions specified in sub rule 7.

Benefits, Concessions and Discounts to the Sick Industry (Rule 34)

In addition to benefits available under section 41 of IEA, GoN may provide or recommend to the financial institutions to extend the following benefits to sick industry:

- for conversion of normal loan to soft loan.
- for waiver of interest and penalty on outstanding loans.
- for extending additional loans on concessional interest rate for operation of industry.
- for extension of loan period in case of black listed industries due to failure to repay the loan.

[PKF TRU comment: Below facilities as per previous IE Rule has now been removed:

- To provide facility of full or partial exemption on duties, fees and tax imposed on import of machinery, equipment, raw materials. Also such facility can be provided on export of produced goods.
- To provide full or partial exemption on tax, fee or penalty for specified period.]

Categorization of Sick Industry (Rule 35)

Criteria / Category	Fully Sick	Sick	Sickness Oriented
Decrease in equity of industry due to operating in loss for last 3 years	70%	50%	30%
Actual Operating level compared to installed capacity for last three years (in percentage)	Less than 20%	Less than 25%	Less than 30%
Number of years industry is fully closed.	For past 3 years	For past 2 years (except for intentional or managerial weakness)	For past 1 year
Number of years industry will take to be profitable after obtaining concession, discounts and benefits facilities as per IEA and Rules provided by GoN.	5 years	3 years	2 years

Contract Manufacturing (Rule 40)

GoN can provide following concessions, exemption and facilities to the export industry producing goods or services on contractual or sub-contractual basis and fulfilling criteria specified in Rule 40(1):

- Cash incentives on the basis of quantity of export;
- Export loan at concessional interest rate;
- Duty Drawback facility;
- Priority in loan facility; and
- Benefit on taxes, duties, fees and facilities on import of raw material from time to time as specified by GoN.

Corporate Social Responsibility (Rule 43)

Large, medium or domestic & small industries with an annual turnover of more than NPR 150 million shall as per section 54(1) of the IEA set aside 1% of its profit before tax for CSR activities every year.

Rule 43 has elaborated the following 8 broad areas where those funds can be utilized in coordination with local level governments.

- Natural disaster prevention and rescue related activities.
- Providing medicine and health equipment to community health organizations, conducting health awareness programs, health camps and other health related activities.
- Preservation and conservation of Nepali art, cultural heritage and monuments.
- Skill development and income generating programs for people with low income, from backward areas, rural women, differently abled, minority groups and marginalized society.
- Scholarships for community schools and Universities, distribution of educational equipment & materials and other activities related to development of education sector.
- Pollution control, waste management, tree plantation, preservation of water source, alternative energy promotion and other environment conservation activities.
- Conducting campaign against social disorders, discrepancies and backwardness.
- Construction of drinking water, road, drainage & sewage, patipauwa, old age home, sports ground, religious site, community health building, other community building, orphanage, park, meditation centers, bus park, bus stand, and construction and repair & maintenance of other physical infrastructure for social welfare.

At least 50% of such set aside CSR amount should be expensed in the areas affected by the industry.

Note: The CSR utilization cannot be made in those activities which may be directly profitable or beneficial to the industry.

right people
right size
right solutions

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