RELIANCE CORPORATE ADVISORS

A Critical Analysis *of* the Industrial Property Bill, 2083

Clause-by-clause commentary on Nepal's proposed consolidated industrial property law, tested against TRIPS/Paris obligations, drafting quality, commercial impact and comparative benchmarks

JULY 2026

Prepared for internal legal review

Table of Contents

Executive Summary

The Industrial Property Bill, 2083 (the "Bill"), published by the Ministry of Industry, Commerce and Supplies for public comment, is a long-overdue and broadly welcome instrument. It repeals the sixty-one-year-old Patent, Design and Trade Mark Act, 2022 (1965) and, for the first time, consolidates eight distinct heads of industrial property into a single statute: patents, utility models, industrial designs, trademarks (including well-known, collective, certification, associated and series marks), geographical indications, integrated-circuit layout designs, trade secrets and protection against unfair competition, and traditional/original knowledge. In scope and architecture the Bill is a generational upgrade and materially closes the gap between Nepali law and the TRIPS Agreement.

On substance, the Bill meets or exceeds most TRIPS minimum standards. Terms of protection (S.99), national and most-favoured-nation treatment (S.S.112-113), patentability exclusions (S.5), Paris-Convention priority (S.93), GI grandfathering exceptions (S.66) and the research/experimental exception (S.12) are all creditably drafted. The compliance risk is not one of falling short of the floor - as a least-developed country Nepal is not even obliged to reach it until 1 July 2034 - but of a handful of drafting choices that will generate litigation, procedural unfairness and enforcement weakness.

This report analyses thirty key provisions. The recurring problems are five: (i) an internal inconsistency in the novelty/prior-art test (S.S.2, 3); (ii) "automatic" cancellations and lapses that operate without notice or hearing (S.S.38, 99), raising both due-process and TRIPS Article 19 concerns; (iii) a compulsory-licensing regime (S.S.17-19) that omits several Article 31 safeguards; (iv) the concentration of registration, adjudication and penal power in a single career civil servant (S.S.78-81), with no qualification requirement and only a monetary-penalty enforcement model that does not satisfy TRIPS Article 61; and (v) a scatter of open-ended delegations and "automatic" mechanics (S.S.115, 117(2), 122) that transfer substantive law-making to the executive. None is fatal; all are fixable before the Bill is tabled.

Key Takeaways

Right instrument, right time. The Bill replaces the 1965 Act and is essential before Nepal's scheduled LDC graduation (Nov 2026, deferral to 2030 requested), after which TRIPS transition flexibilities fall away.

Terms exceed TRIPS. Patent 21 years, design 15, trademark 10 (renewable indefinitely), IC layout 15 - all at or above the TRIPS floor (Arts 33, 26.3, 18, 38).

Novelty test is internally inconsistent. S.2 posits absolute novelty (including prior use) while S.3(3) limits prior art to written disclosure - the two must be reconciled.

Compulsory licensing (S.S.17-19) lacks explicit Article 31 safeguards: prior-negotiation requirement, predominantly-domestic-supply limb, and non-assignability are under-specified.

Automatic cancellation for 3-year non-use (S.38) omits the TRIPS Art 19 'valid reasons' defence and any notice/hearing - a due-process and compliance risk.

No imprisonment for wilful counterfeiting/piracy. S.81 is purely monetary; TRIPS Art 61 requires criminal penalties including imprisonment for commercial-scale trademark counterfeiting.

Institutional concentration. A single first-class officer registers, adjudicates opposition, imposes penalties and orders seizure/destruction (S.S.78-81); appeal to the High Court Commercial Bench (S.87) is the only judicial check.

Penalty hierarchy is inverted. Trademark/GI infringement (NPR 10-15 lakh) is punished more heavily than patent infringement (NPR 5-10 lakh).

Open-ended executive power. Removal-of-difficulties (S.115), registration on a foreign certificate without examination (S.117(2)) and Cabinet amendment of Schedules (S.122) need tighter guardrails.

Pro-innovation features worth keeping: disclosure of origin and benefit-sharing (S.S.11, 74), TK sui-generis protection (S.S.74-75), SME 50% fee concession (Schedule 2), and unregistered protection for trade names, trade dress and passing off (S.S.49-51).

Scope and Methodology

This analysis is based on the scanned draft of the Bill circulated with the Ministry's public notice (79 pages; operative provisions S.S.1-123 followed by Schedules 1-15).. Each provision is assessed on four lenses, as requested:

1. TRIPS / Paris compliance - measured against the WTO TRIPS Agreement and the Paris Convention (to which Nepal acceded on 22 June 2001), noting that as an LDC Nepal's implementation deadline is 1 July 2034 (pharmaceutical product patents, 1 January 2033).
2. Drafting and legal defects - ambiguity, internal inconsistency, excessive delegation, constitutional/administrative-law risk and enforceability.
3. Commercial and practical impact - effect on applicants, businesses, prosecution timelines, fees and litigation.
4. Comparative - benchmarked against the repealed 1965 Act, Indian practice (Patents Act 1970; Trade Marks Act 1999) and general model-law/EU norms.

NOTE

A least-developed country legislating ahead of its deadline

Nepal is not yet obliged to comply with most of TRIPS. The value of testing the Bill against TRIPS is therefore forward-looking: the statute should be born compliant so that LDC graduation does not immediately expose it. Where the Bill exceeds the TRIPS floor, that is a sovereign policy choice, not an error - but each such choice carries a domestic cost that should be deliberate.

1

Context, Architecture *and* What the Bill Changes

The Bill is Nepal's first attempt to state the whole of industrial property law in one modern statute. Understanding what it adds to - and takes from - the 1965 Act frames every clause that follows.

The repealed Patent, Design and Trade Mark Act, 2022 (1965) protected only three rights and did so thinly: patents ran for seven years, renewable twice (a twenty-one-year maximum), with no substantive-examination discipline, no utility model, no geographical indication, no trade-secret or layout-design protection, and no recognition of traditional knowledge. The Bill (S.123 repeals and saves) replaces that regime wholesale.

TABLE 1.1

What the Bill Adds to the 1965 Regime

Scope of protected subject matter, old law vs. Bill

Right / feature	1965 Act	Bill, 2083
Patents	Yes (7 yrs ×3)	Yes (21 yrs, S.99)
Utility models	No	Yes (S.S.21-23, 9 yrs)
Industrial designs	Yes	Yes (S.S.24-30, 15 yrs)
Trademarks	Yes (basic)	Yes + well-known/collective/certification/series (S.S.31-48)
Geographical indications	No	Yes (S.S.52-66)
IC layout designs	No	Yes (S.S.67-71)
Trade secrets / unfair competition	No	Yes (S.S.72-73)
Traditional / original knowledge	No	Yes (S.S.74-75)
Substantive examination	No	Yes (S.S.7, 27, 34, 59, 70)
Appeal forum	Limited	High Court Commercial Bench (S.87)

Source: Bill, 2083; Patent, Design and Trade Mark Act, 2022 (1965). Author's tabulation. **Note:** Term figures run from the application/filing date under S.99.

The timing matters. Nepal committed at WTO accession (2004) to enact TRIPS-compliant industrial-property legislation by 1 January 2006; two decades on, the 1965 Act still governs. Nepal is scheduled to graduate from LDC status on 24 November 2026 (the Government has requested deferral to 2030). On graduation, the TRIPS transition flexibilities that currently excuse non-compliance disappear. Passing a compliant statute now is therefore not merely tidy-up but risk management.

S.1 sets commencement at ninety-one days after certification. The delayed commencement is sensible - it gives the Office, Rules and Schedules time to stand up - but the Bill contains no provision expressly bridging the gap for rights that arise in that window, and the transitional rule (S.111) addresses only applications pending under the old Act. A short saving for acts done between certification and commencement would remove doubt.

2

Patents *and* Utility Models

The patent chapter is the technical core of the Bill. It is competent and largely TRIPS-shaped, but three provisions - the novelty test, the examination clock and the compulsory-licence regime - need work.

2.1 S.2 & S.3 - Novelty, inventive step and the prior-art inconsistency

S.3 sets the classic tripartite test - novelty, inventive step and industrial application - and defines inventive step as non-obviousness to a person skilled in the art. That is orthodox and TRIPS Article 27-compliant. The defect is internal. The definition of novelty in S.2 adopts an absolute-novelty standard: an invention is not novel if it was publicly published, or in use in Nepal or in a Paris/other country, before filing. Yet S.3(3) defines the novelty-defeating "prior art" as information made available to the public in written form before the filing or priority date.

The two do not sit together. On S.2, prior public use anywhere destroys novelty; on S.3(3), only written disclosure counts, so an unwritten prior use would not. Examiners and courts will have to guess which controls. The cleaner drafting - and the international norm (EPC Art 54; India, s.2(1)(l), (j)) - is absolute novelty by any means: written or oral description, use, or any other disclosure, anywhere in the world. The Bill should delete the "written form" limiter in S.3(3) or expressly subordinate it to S.2.

SPOTLIGHT 2.1

One line, two standards

If S.3(3)'s "written form" survives, Nepal will have a weaker novelty bar than the definition in S.2 promises - inviting patents over subject matter already in public use but never written down. Reconcile the two before enactment; this is the single most consequential drafting fix in the patent chapter.

2.2 S.5 - Non-patentable subject matter

S.5 is well constructed and tracks TRIPS Article 27.2-27.3: it excludes inventions contrary to public order, health, morality or national security; diagnostic, therapeutic and surgical methods for humans and animals (with the correct proviso that devices and products for such methods remain patentable); plants and animals and essentially biological processes (with the micro-organism/non-biological proviso); mathematical methods, business methods, computer programs and algorithms; and mere schemes and rules of games. This mirrors India's s.3 and Article 27 flexibilities faithfully. S.5(2) sensibly reserves plant-variety and living-organism protection to separate sui generis legislation.

Two observations. First, the software exclusion (S.5(1)(ङ)) excludes "computer programs or algorithms" as such but is silent on computer-implemented inventions with a technical effect; the Office will need guidance to avoid either over- or under-excluding. Second, unlike India (s.3(d)), the Bill contains no anti-evergreening provision denying patents for new forms of known substances absent enhanced efficacy. For a country that will host a generic-pharmaceutical industry until at least 2033, the deliberate omission of an efficacy threshold is a policy gap worth debating, not a compliance error.

2.3 S.7 - Substantive examination and the nine-month clock

S.7 introduces genuine substantive examination (novelty, inventive step, industrial application) - a major advance on the 1965 Act. The examiner must report within nine months. The problem is the trigger: the nine months run from the date the examination is "assigned," and nothing in the Bill fixes how soon after filing (or after fees) assignment must occur. An open-ended pre-assignment period defeats the discipline the deadline is meant to impose. The Bill should peg assignment to a defined event (e.g., within X days of the substantive-examination fee) so that total pendency is bounded and predictable for applicants.

2.4 S.8 - Pre-grant opposition

S.8 provides a ninety-day pre-grant opposition after bulletin publication, with a fifteen-day reply (one extension). Pre-grant opposition is a legitimate, India-style quality filter. But the Bill provides pre-grant opposition only; there is no post-grant opposition or administrative revocation short of court proceedings. Third parties who discover invalidating art after grant are pushed straight to litigation. A post-grant opposition or revocation mechanism would be a cheaper, faster corrective and is standard in mature systems.

2.5 S.11 - Rights of the patentee; disclosure of origin and benefit-sharing

S.11 confers a full TRIPS Article 28 bundle (make, use, sell, offer, import; process and product protection; licensing; enforcement). Notable is S.11(4)-(5): where an invention uses traditional knowledge, biodiversity or genetic resources, the applicant must disclose the source, and benefit-sharing is to follow "by mutual agreement between the parties." The disclosure-of-origin requirement is progressive and aligns with the CBD/Nagoya architecture (and pre-empts the recent WIPO GRATK Treaty direction). The weakness is enforcement: leaving benefit-sharing to private agreement, with no statutory default formula, fallback tribunal or consequence for refusal, risks rendering the community's entitlement illusory. Pair the disclosure duty with a statutory benefit-sharing backstop.

2.6 S.12 - Exceptions to patent rights

S.12 permits private non-commercial use, academic research and experimentation (no commercial exploitation), and use under compulsory licence or by the Government. This is a clean Article 30 limited-exception clause. It stops short, however, of an express Bolar/regulatory-review exception allowing generic manufacturers to conduct pre-expiry work to obtain marketing approval. Given Nepal's generic-pharma interest, an explicit Bolar exception (upheld as TRIPS-consistent in Canada - Pharmaceutical Patents, WT/DS114) would be a valuable, low-risk addition.

2.7 S.14 - First-to-file and employee inventions

S.14 adopts first-to-file (the global norm) and, in S.14(3)-(4), provides that employee inventions are governed by contract, failing which the right vests in the employer. Default vesting in the employer is a defensible policy choice but a consequential one: it should be read against Nepal's labour law and, ideally, tempered by a statutory right to reasonable remuneration for the employee-inventor (as in Germany, Japan and the UK). As drafted, an employee-inventor with no contract receives nothing.

2.8 S.15 - Government acquisition and use

S.15 lets the Government keep applications secret and acquire a patent in the national interest or for security, with compensation assessed by the Office. This is a legitimate Crown-use/acquisition power, but two safeguards are thin: compensation is assessed by the same Office that exercises the power (assessor and interested party coincide), and the standard of compensation is undefined. Article 31(h)/(j) logic - adequate remuneration, independently reviewable - should be imported: independent valuation and an express appeal on quantum.

2.9 S.S.17-19 - Compulsory licensing

The compulsory-licence regime is the patent chapter's most important - and most under-engineered - component. S.17 lists sound grounds: national emergency/public-health/economic disruption; refusal to work or unreasonable licensing terms; excessive pricing or supply manipulation of essential goods; anti-competitive conduct found by a competent body; and dependent patents. These map onto Article 31 and the Doha Declaration. But the mechanics omit several Article 31 conditions that a challenged licence would need:

- Prior negotiation (Art 31(b)): no express requirement that the applicant first sought a voluntary licence on reasonable commercial terms, save impliedly for the emergency ground. The general grounds should state this expressly, and state the emergency waiver expressly.
- Predominantly domestic supply (Art 31(f)): no limb confining the licence predominantly to the domestic market - and, conversely, no adoption of the Article 31bis export mechanism for supplying countries without manufacturing capacity. One or the other should be chosen deliberately.
- Scope and duration limited to purpose (Art 31(c)) and non-assignability (Art 31(e)): S.18 lets the Office decide whether the licence is transferable, whereas Article 31(e) requires non-assignability except with the enterprise that enjoys it.
- Adequate remuneration and judicial review (Art 31(h),(j)): S.17(4) allows compensation and/or royalty and S.87 gives an appeal to the High Court - this limb is broadly satisfied, but the remuneration standard ('adequate, taking account of economic value') should be stated.

SPOTLIGHT 2.2

Compliant grounds, incomplete conditions

The grounds for a compulsory licence are TRIPS-shaped; the conditions attaching to one are not fully spelt out. A licence granted under S.S.17-19 as currently drafted could be attacked - by a patentee or, post-graduation, at the WTO - for want of the Article 31 procedural furniture. Import the Article 31(a)-(l) checklist expressly.

2.10 S.S.10 & 21-23 - Utility models

The utility-model chapter (nine-year term, novelty plus industrial application, no inventive-step requirement) is a pragmatic, development-friendly tier - TRIPS is silent on utility models, so this is optional and additive. S.10's conversion of a failed patent application into a utility model, preserving the original priority date, is applicant-friendly and sensible. The one caution: S.21 bars simultaneous patent and utility-model applications for the same invention but the anti-double-protection machinery (S.21(4) - first-filed subject prevails) is terse and will need Rules to administer cleanly.

3
Trademarks, Trade Names *and* Geographical Indications

The marks and GI chapters are the Bill's commercial heartland. They are modern and mostly sound, but S.38's automatic cancellation, S.39(5)'s grandfathering of squatted marks and S.40's mandatory marking are flags.

3.1 S.32 - Absolute and relative grounds for refusal

S.32 is a comprehensive refusal list: public order and morality; state emblems, flags and official signs (Paris Art 6ter); confusion with earlier marks and with well-known marks registered in Paris/TRIPS countries (Art 6bis, 16); descriptive, generic and non-distinctive signs; INN pharmaceutical names; single colours without shape; and portraits without consent. This is well above the 1965 Act and broadly complete. The drafting mixes absolute and relative grounds in one list without labelling them, which will complicate the burden of proof and the availability of consent/acquired-distinctiveness arguments; separating the two (as in the EUTMR and India) would aid administration.

3.2 S.38 - Three-year non-use and automatic cancellation

S.38 requires the proprietor to file proof of use within three years of registration; on failure the mark is "automatically cancelled." Two problems. First, TRIPS Article 19 permits cancellation for non-use only after an uninterrupted period of at least three years and only if the proprietor cannot show valid reasons (obstacles beyond its control - import restrictions, regulatory delay, etc.). The Bill's flat rule, with no 'valid reasons' defence, is narrower than Article 19 allows and therefore over-cancels. Second, 'automatic' cancellation without notice or hearing offends ordinary natural-justice standards and Article 41's procedural-fairness requirement.

The fix is straightforward: recast S.38 as cancellation on application (or on the Office's motion) after three years' continuous non-use, subject to a valid-reasons defence and a hearing. Automatic operation should be replaced by a determinative act that is appealable.

3.3 S.39(5) - Well-known marks and the grandfathering proviso

S.39 lets the Office cancel marks that conflict with well-known marks. But the proviso to S.39(5) excludes from this protection marks already registered before the Act commences. The practical effect is to grandfather existing local registrations that squat on foreign well-known marks - precisely the mischief Article 6bis of Paris and Article 16.2-16.3 of TRIPS target. A well-known-mark owner facing a pre-commencement squatter is left to the ordinary confusion and passing-off routes. Nepal, as a Paris member since 2001, already owes 6bis protection; the proviso should be narrowed so that bad-faith pre-existing registrations remain vulnerable.

3.4 S.S.42-43 - Registration-based well-known-mark protection

S.42 provides for the registration and protection of well-known marks and S.43 sets sensible criteria (extent and duration of use, geographic reach, market share, promotion, goodwill value, foreign decisions). The structural point is that the Bill's fullest well-known-mark protection is keyed to domestic registration, whereas Paris Article 6bis protects well-known marks whether or not registered in the country. The confusion-based bars in S.32 and S.39 provide some unregistered protection, but the Bill would be safer if it stated expressly that a mark well-known in Nepal is protected under Article 6bis irrespective of registration.

3.5 S.40 - Mandatory ® marking

S.40 requires the ® symbol to be used when a registered mark is used, and S.41 forbids passing off an unregistered mark as registered. Compulsory marking is unusual: most systems (India, EU, US) make ® optional and merely prohibit false claims of registration. A mandatory-marking rule creates a technical breach every time a proprietor omits the symbol, with unclear consequences for enforceability. Recommend making marking permissive while retaining the S.41 prohibition on false claims.

3.6 S.S.49-51 - Passing off, trade names and trade dress without registration

The Bill deserves credit for S.S.49-51, which protect unregistered well-known marks (passing off), trade names (Paris Art 8) and trade dress without registration. This preserves the common-law action and fills a real gap in the 1965 regime. One limitation is deliberate but worth flagging commercially: S.49(4) confines the unregistered claimant to an injunction and destruction of infringing goods and bars a damages claim. Denying damages for passing off weakens deterrence and diverges from Indian and English practice; consider allowing damages or an account of profits on proof of bad faith.

3.7 S.S.52-66 - Geographical indications

The GI chapter is a highlight. Registration is open to producer collectives and competent bodies (not individuals), which is correct for a collective right; S.65(2) rightly makes GIs non-licensable and non-transferable; and S.66 faithfully imports the TRIPS Article 24 exceptions - prior good-faith use of at least ten years before 15 April 1994, pre-WTO good-faith registration, customary/generic terms, and a five-year limitation on challenging adverse use. S.53 sensibly bars registration of a GI as a trademark and requires conflicting existing marks to change within one year.

The Bill extends uniform GI protection to all products (S.56), which is stronger than TRIPS requires (Article 23's higher protection is mandatory only for wines and spirits). That is a legitimate, GI-exporter-friendly choice for a country whose interest lies in protecting products like teas, coffees, textiles and handicrafts. The main practical risk is capacity: robust GI protection presupposes an Office able to police quality-control and conformity, which S.S.52(झ) and 64's national-logo scheme assume but do not resource.

TABLE 3.1

TRIPS/Paris Compliance Scorecard - Selected Provisions

Author's assessment; 'Meets' = at or above the TRIPS/Paris floor

Provision	Benchmark	Assessment
S.5 exclusions	TRIPS Art 27	Meets
S.99 terms	TRIPS Arts 33/26.3/18/38	Exceeds
S.12 exceptions	TRIPS Art 30	Meets
S.S.17-19 comp. licence	TRIPS Art 31	Partial - conditions incomplete
S.38 non-use	TRIPS Art 19	At risk - no 'valid reasons' defence
S.S.42-43 well-known marks	Paris 6bis / TRIPS 16	Partial - registration-keyed
S.S.52-66 GIs	TRIPS Arts 22-24	Meets/Exceeds
S.93 priority	Paris Art 4	Meets
S.S.112-113 NT/MFN	TRIPS Arts 3-4	Meets
S.81 criminal penalties	TRIPS Art 61	At risk - no imprisonment

Source: Author's analysis against TRIPS and the Paris Convention. **Note:** 'At risk' denotes a live compliance question that should be resolved before enactment.

4

IC Layout Designs, Trade Secrets, Unfair Competition *and* Traditional Knowledge

These chapters take Nepali law into subject matter it has never covered. They are conceptually sound; the traditional-knowledge provisions are ambitious and the trade-secret provisions are thin.

4.1 S.S.67-71 - Integrated-circuit layout designs

The layout-design chapter creates a registration-based right with a fifteen-year term (S.99), exceeding the ten-year TRIPS minimum (Article 38). The regime borrows the patent/design examination and opposition machinery by reference. Because Nepal has no semiconductor manufacturing, this chapter is essentially treaty-compliance scaffolding rather than a live commercial regime - appropriately economical, though the registration-and-examination model is heavier than the deposit-based systems most jurisdictions use for layout designs.

4.2 S.S.72-73 - Trade secrets and unfair competition

S.72 protects undisclosed information of commercial value that is kept secret by reasonable measures, and authorises NDAs; S.73 prohibits unfair competition in Paris Article 10bis terms (dishonest practices, confusion, false allegations, misleading indications). Together these satisfy TRIPS Article 39. But S.72 is skeletal: it frames trade-secret protection largely as an employment-confidentiality duty and points to 'prevailing law' for remedies, without specifying the elements of misappropriation, the position of third parties who acquire secrets in bad faith, or interim protection to prevent disclosure during litigation. It also omits the Article 39.3 protection for undisclosed pharmaceutical/agrochemical test data - again defensible while the pharma transition runs to 2033, but a conscious gap. A fuller misappropriation framework (cf. the US UTSA / EU Trade Secrets Directive) would strengthen this chapter.

4.3 S.S.74-75 - Traditional and original knowledge

The traditional-knowledge chapter is the Bill's most original contribution and goes well beyond anything TRIPS requires. It directs the Office to build an electronic register of TK, vests benefit rights in the source community equally among members (S.74(3)), requires prior approval of the competent body before any IP is built on TK (S.74(5)), and mandates self-declaration of the biodiversity/genetic-resource source in patent applications (S.74(6)). S.75 leaves benefit-sharing to a separate law, applying the Act mutatis mutandis meanwhile, and - importantly - provides that where two or more communities claim the same TK, it is recorded in the Government's name pending final judicial determination (S.75(2)).

Ambition aside, three practical risks stand out. First, defining the boundaries of protectable 'traditional and original knowledge' is notoriously hard; without tight definitions the register invites over-claiming and disputes. Second, the S.75(2) default vesting in the Government pending adjudication could, in practice, expropriate communities for long periods given the pace of litigation. Third, the S.74(5) prior-approval requirement, breach of which is an offence (S.80(ज)), creates a serious compliance burden on legitimate researchers and should be matched by a clear, time-bound approval process. This chapter needs its promised sui generis benefit-sharing statute to function; enacting the duties before the machinery exists risks paper rights.

SPOTLIGHT 4.1

Rights that need their machinery

Disclosure of origin (S.S.11, 74(6)), community benefit-sharing (S.S.74-75) and TK prior-approval (S.74(5)) are the right instincts. But each depends on institutions - a benefit-sharing formula, an approval process, a valuation method - that the Bill defers to future law. Sequencing matters: obligations without machinery generate liability without remedy.

5

Institutions, Enforcement, Terms *and* Delegated Power

How the Bill is administered will decide whether it works. Here the concentration of power in one office, the purely monetary penalty model and several open-ended delegations are the principal concerns.

5.1 S.S.78-79 - The Industrial Property Office

S.78 establishes the Office under a gazetted first-class officer of the Nepal Administrative Service, on whom S.78(2) confers quasi-judicial power over administration, opposition and appeals. The same officer, under S.79, registers rights, appoints examiners, and orders seizure and destruction of infringing goods. Concentrating registration, first-instance adjudication and enforcement in a single career administrator - with no requirement of legal or technical qualification - is the Bill's central institutional weakness. It risks both the appearance and the reality of the registrar judging its own grants, and it places complex patent-validity and infringement questions before a generalist. The appeal to the High Court Commercial Bench (S.87) is an essential check but a distant one. Consider a qualification requirement (or a legally-qualified adjudicating officer distinct from the registrar) and an internal appellate tier before the High Court.

5.2 S.S.80-83 - Offences, penalties and corporate liability

S.80 catalogues the infringing acts; S.81 fixes the penalties, imposed by the Office head, with confiscation. Two structural issues. First, the model is purely monetary - fines from NPR 1 lakh to 15 lakh, doubled on repeat - with no imprisonment. TRIPS Article 61 requires criminal procedures and penalties, including imprisonment sufficient to deter, at least for wilful trademark counterfeiting and copyright piracy on a commercial scale. A fine-only regime does not meet Article 61 for counterfeiting; the Bill needs a genuine criminal limb (prosecuted in court, with imprisonment available) for commercial-scale counterfeiting, separate from the administrative fine.

Second, the penalty hierarchy is inverted. Trademark, GI and unfair-competition offences attract NPR 10-15 lakh (S.81(1)(ग)) while patent, trade-name/dress and trade-secret offences attract only NPR 5-10 lakh (S.81(1)(क)). Patents protect the highest-value, hardest-won inventions; punishing their infringement less severely than trademark infringement is hard to justify and will read oddly to investors. S.82's corporate-liability rule (liability of the responsible director/manager/executive, with a genuine-lack-of-consent defence) is, by contrast, well-drafted.

TABLE 5.1

Penalty Structure under S.81

Administrative fines imposed by the Office head; no imprisonment

Offence category	Provision	Fine (NPR)
Patent; trade name/dress; trade secret	S.81(1)(क)	5-10 lakh
Utility model; design; IC layout	S.81(1)(ख)	3-5 lakh
Trademark; GI; unfair competition	S.81(1)(ग)	10-15 lakh
TK prior-approval; biodiversity declaration	S.81(1)(घ)	5-10 lakh
Repeat offence	S.81(2)	Double each time
Other breaches of Act/Rules	S.81(3)	1-5 lakh

Source: Bill, 2083, S.81. **Note:** No custodial penalty is provided - see the TRIPS Art 61 discussion at 5.2.

5.3 S.S.84-87, S.91 - Complaints, summary procedure, appeal and limitation

Infringement complaints go to the Office head, who must decide within ninety days (S.84) using the Summary Procedure Act, 2028 (S.86); the decision carries District Court enforcement powers (S.84(5)) and an appeal lies to the High Court Commercial Bench within thirty days (S.87). Routing IP disputes through summary procedure privileges speed over the evidentiary depth that patent-validity and infringement disputes typically require (expert evidence, claim construction, discovery); summary procedure may suit clear-cut trademark counterfeiting but will be a poor fit for contested patent litigation. S.91's limitation - a complaint within ninety days of learning of the infringement - is strikingly short for IP, where infringement is often continuing and detection slow; ninety days risks time-barring meritorious claims. A longer limitation (or an express continuing-infringement rule) is advisable.

5.4 S.99 - Terms of protection and renewal

S.99 is TRIPS-compliant and, for patents, generous. The twenty-one-year patent term (measured from filing) exceeds the twenty-year Article 33 minimum - a legacy of the 1965 Act's 7×3 structure, now converted into a single unconditional term rather than a renewable one. Designs (15 years, renewable in 5-year tranches) and IC layouts (15 years) exceed their minimums; trademarks (10 years, indefinitely renewable) satisfy Article 18; GIs endure while the sign remains in use; trade secrets while confidentiality subsists; and TK in perpetuity as national heritage. The mechanics need one clarification: S.99(3) requires a patent/utility-model maintenance fee every three years, but the Bill does not state in terms that non-payment causes the patent to lapse (contrast the express automatic lapse for non-renewal of marks and designs in S.99(6)). Spell out the consequence of non-payment of the annuity.

TABLE 5.2

Terms of Protection vs. TRIPS Minima

All Bill terms run from the application/filing date (S.99)

Right	Bill term	TRIPS minimum	Renewal
Patent	21 years	20 (Art 33)	Annuity every 3 yrs (S.99(3))
Utility model	9 years	- (optional)	Annuity every 3 yrs
Industrial design	15 years	10 (Art 26.3)	Every 5 yrs

Right	Bill term	TRIPS minimum	Renewal
Trademark	10 years	7 (Art 18)	Every 10 yrs, indefinite
IC layout design	15 years	10 (Art 38)	Every 5 yrs
Geographical indication	While in use	- (indefinite)	n/a
Trade secret	While confidential	- (indefinite)	n/a
Traditional knowledge	Perpetual	- (not in TRIPS)	n/a

Source: Bill, 2083, S.99; TRIPS Agreement. **Note:** Utility-model and TK protection are additive; TRIPS neither requires nor limits them.

5.5 S.S.112-113 - National and most-favoured-nation treatment

S.112 (national treatment) and S.113 (MFN) transpose TRIPS Articles 3 and 4 and Paris Article 2. They are correctly stated in principle. The drafting caveat is that both are expressed as flat rules without the specific exceptions Articles 3 and 4 permit (e.g., the MFN carve-outs in Article 4(a)-(d) for pre-existing agreements and judicial/administrative reciprocity). Flat over-commitment is not itself a breach, but it forecloses flexibilities Nepal is entitled to keep; consider mirroring the treaty exceptions.

5.6 S.115, S.117(2) & S.122 - Delegated power and 'automatic' mechanics

Three delegation points warrant scrutiny. S.115 empowers the Ministry to resolve 'difficulties' or 'ambiguities' in implementing the Act - a removal-of-difficulties clause that, if read broadly, lets the executive rewrite statutory meaning; it should be time-limited and expressly barred from amending the Act itself. S.117(2) allows the Office to register the industrial property of a Paris-member applicant on the strength of a foreign registration certificate 'without examination.' For trademarks this echoes the Paris Article 6quinquies 'telle quelle' rule, but as drafted it applies to any industrial property, which would let foreign patents and designs onto the register without the substantive examination the Bill otherwise mandates - a significant and probably unintended loophole. Confine S.117(2) to marks, and preserve the S.32 refusal grounds. S.122 lets the Council of Ministers amend the Schedules (including the fee structure) by notification; ordinary for fees, but the Schedules should not carry substantive rights that could then be altered without Parliament.

SPOTLIGHT 5.1

Guard the delegations

S.115 (difficulties), S.117(2) (registration without examination) and S.122 (Schedule amendment) each hand the executive more than is needed. None is unusual on its own; together they let substantive industrial-property law shift without legislative scrutiny. Narrow each to its legitimate core.

Overall Assessment and Recommendations

The Industrial Property Bill, 2083 should be enacted - Nepal needs it, and needs it before LDC graduation exposes the 1965 Act's inadequacy. It is, on the whole, a competent, TRIPS-oriented, forward-looking statute that its drafters have clearly built with the treaty text in front of them. The recommendations below are corrective, not foundational: they aim to make a good Bill litigation-resistant and genuinely compliant, so that it survives graduation without amendment.

1. Reconcile the novelty test: delete the 'written form' limiter in S.3(3) or subordinate it to the absolute-novelty definition in S.2.
2. Recast S.38 non-use cancellation as determinative (not automatic), after 3 years' continuous non-use, with a TRIPS Art 19 'valid reasons' defence and a hearing.
3. Complete the compulsory-licence conditions (S.S.17-19): add express prior-negotiation, predominantly-domestic-supply (or Art 31bis export), non-assignability and an adequate-remuneration standard.
4. Add a criminal limb to S.81 - court-imposed, imprisonment available - for commercial-scale trademark counterfeiting and piracy, to meet TRIPS Art 61; and rebalance the inverted penalty hierarchy so patent infringement is not punished more lightly than trademark infringement.
5. Separate registration from adjudication in the Office (S.S.78-79), add qualification requirements, and consider an internal appellate tier below the High Court.
6. Narrow the delegations: time-limit S.115, confine S.117(2) to trademarks, and keep substantive rights out of Cabinet-amendable Schedules (S.122).
7. Lengthen the S.91 limitation and add a continuing-infringement rule; reconsider routing contested patent disputes through summary procedure (S.86).
8. Give the disclosure-of-origin, benefit-sharing and TK duties (S.S.11, 74-75) their machinery - a statutory benefit-sharing default and a time-bound S.74(5) approval process - before the obligations bite.
9. Narrow the S.39(5) proviso so bad-faith pre-commencement registrations that squat on well-known marks remain vulnerable.
10. Minor fixes: make ® marking permissive (S.40); state the consequence of non-payment of the patent annuity (S.99(3)); add an express Bolar/regulatory-review exception (S.12); mirror the Art 3/4 treaty exceptions in S.S.112-113.

Handled in committee, these are a fortnight's redrafting, not a redesign. The Bill's instincts - broad coverage, TRIPS alignment, GI and TK ambition, SME concessions, unregistered-rights protection - are right. Tightening the novelty test, the cancellation and lapse mechanics, the compulsory-licence conditions, the enforcement architecture and the delegations would move it from 'broadly compliant' to 'robust.'