

# FDI Foreign Direct Investment HANDBOOK

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The logo for Pioneer Law Associates features the word "PIONEER" in a large, bold, black, sans-serif font. A stylized graphic element, consisting of a blue square with a white diagonal line, is positioned between the "O" and "E". Below "PIONEER", the words "LAW ASSOCIATES" are written in a smaller, bold, black, sans-serif font.

# PIONEER

## LAW ASSOCIATES

*Pioneer Law Associates ("**Pioneer Law**") was founded in 1982 by four lawyers recognized for professional specialization in their respective practice areas, and with a vision to create institutional set up to provide expert legal services in the areas of commercial, civil and criminal laws. Since the concept of institutional legal practice with specialization in multiple practice areas was a new one at that time, Pioneer Law pioneered a new trend and hence the name "**Pioneer**". Since then, Pioneer Law has evolved as a full-service law firm and is recognized as a leading commercial law firm in Nepal. Pioneer Law continues to be a pioneer as a full-service law firm with highly regarded specialization in commercial laws.*

*We also strongly believe in knowledge sharing and disseminating our knowledge to the legal fraternity and stakeholders, through academic presentations and publications. We hope that the FDI Handbook will be helpful to provide some background to the current law and practice in this area.*

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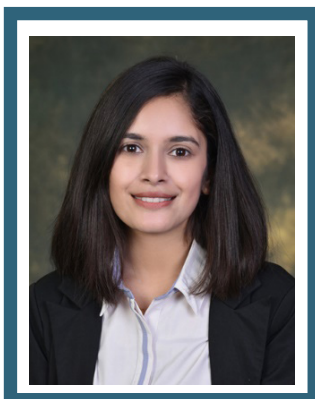


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# Abbreviations

<b>AOA</b>	Articles of Association
<b>BFI</b> s	Banks and Financial Institutions
<b>BIMSTEC</b>	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
<b>BIT</b> s	Bilateral Investment Treaties
<b>CIB</b>	Credit Information Bureau
<b>CIETAC</b>	China International Economic and Trade Arbitration Commission
<b>DOI</b>	Department of Industries
<b>DCF</b>	Discounted Cash Flow
<b>FDI</b>	Foreign Direct Investment
<b>FITTA</b>	Foreign Investment and Transfer of Technology Act, 2075 (2019)
<b>FITTA, 1992</b>	Foreign Investment and Transfer of Technology Act, 2049 (1992)
<b>FITTA Regulation</b>	Foreign Investment and Transfer of Technology Regulation, 2077 (2021)
<b>FY</b>	Fiscal Year
<b>HKIAC</b>	Hong Kong International Arbitration Centre
<b>IBN</b>	Investment Board of Nepal
<b>ICC</b>	International Chamber of Commerce
<b>IEA</b>	Industrial Enterprises Act, 2076 (2020)
<b>IEA, 1992</b>	Industrial Enterprises Act, 2049 (1992)
<b>IEA, 2016</b>	Industrial Enterprises Act, 2073 (2016)
<b>IMF</b>	International Monetary Fund
<b>IRD</b>	Inland Revenue Department
<b>ITA</b>	Income Tax Act
<b>JVA</b>	Joint Venture Agreement
<b>MOA</b>	Memorandum of Association
<b>MIGA</b>	Multilateral Investment Guarantee Agency
<b>LCIA</b>	London Court of International Arbitration
<b>NRB</b>	Nepal Rastra Bank
<b>NPR</b>	Nepalese Rupees
<b>OCR</b>	Office of Company Registrar
<b>SAFTA</b>	South Asian Free Trade Area
<b>TDS</b>	Tax Deducted at Source
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>USD</b>	United States Dollar
<b>VAT</b>	Value Added Tax
<b>WTO</b>	World Trade Organization

# CHAPTER 1

## FDI in Nepal



### 1.1. Political System Pertaining to FDI

The start of economic reforms and pursuit of liberal policies in Nepal can be traced as far back as 1985, when Nepal embarked upon a Structural Adjustment Program following a standby arrangement with the IMF. In the following year, Nepal also entered into a structural adjustment loan program with the World Bank. As part of and support of the loan program, Nepal undertook certain key reform initiatives covering privatization, devaluation of currency, reduction in trade barriers, and greater private sector participation. That provided a foundation for economic growth of Nepal. Nepal witnessed a stable economic growth rate of 4% on average during 1987-1998, with the highest growth rate being recorded at 8.3% in 1994.<sup>1</sup>

Equally important was the restoration of the multi-party democracy system in 1990 from absolute monarchy system and the adoption of several legislations that opened the closely held economy to private sectors, both domestic and foreign. Notable legislations during this period were FITTA, 1992 and IEA, 1992 along with the Privatization Act, 1994. FITTA, 1992 provided for – (a) relaxation in foreign ownership ceilings (with the exception of a few sectors), (b) free repatriation, and (c) treatment of equity, debt, and technology transfer as foreign investment. During this period, the Government of Nepal also introduced the one window policy that created a system of better coordination among the authorities regulating foreign investment in the country. In the same spirit, Nepal also became a member of WTO, BIMSTEC, SAFTA and MIGA, which acted as a catalyst for the growth in trade and investment in Nepal.

Subsequently, the decade long civil war (1996 – 2006) had a counter-productive effect on the country's economy and its effects on the investment climate of the country were palpable. With no investment security during that period, the inflow of foreign investment dropped significantly. In comparison to her South Asian counterparts, Nepal has lower wage rates, a relatively stable economy, a trainable work force, an untapped production capacity, and a progressively growing

domestic market, yet it has not been able to attract the number of foreign investments as it should have. Undeniably, the unstable political environment had a major role to play. Over the years, Nepal has seen multiple governments with varying political ideologies, conflicts within the ruling government, and civil unrest.

The end of the civil war in 2006 saw Nepal transform into a democratic republic, however, political stability would only be achieved after the promulgation of the Constitution of Nepal, 2015. With it, Nepal became a federal democratic republic with a bicameral legislature. From the Constitution flows the fundamental rights to establish and operate industries, and under the Directive Principles of the State, as envisaged under the Constitution, Nepal aims to develop its national economy in order to achieve economic prosperity by – (a) promoting industries, and (b) encouraging foreign investment in various sectors.



<sup>1</sup> Nepal - Structural Adjustment Project (English). Washington, D.C.: World Bank Group.

<http://documents.worldbank.org/curated/en/511311468060281203/Nepal-Structural-Adjustment-Project>.

## 1.2. FDI Laws

The Government of Nepal has adopted policies promoting investment in Nepal while also guaranteeing security to investors. To this extent, newly enacted legislations like FITTA and IEA have replaced FITTA, 1992, and IEA, 2016 respectively and have addressed the shortcomings of the repealed acts. FITTA has provided for repatriation in convertible currency, national treatment policy, hundred percent foreign ownership (with the exception of a few industries), protection against expropriation, and the institutionalization of the one window policy. The newly enacted FITTA compared to FITTA, 1992 opened more sectors to foreign investment, which included investment through venture capital, lease financing, securities in secondary market, purchase of share or assets in companies established in Nepal, and most importantly recognized foreign investment made in form of the establishment or expansion of a branch industry. Likewise, the recently enacted IEA provides several tax exemptions for the promotion of investment. Further, in the spirit of federalism, IEA also allows registration of industries at the state level.

list for obtaining FDI approval and repatriation of FDI amount, (b) timeline for bringing in the FDI amount in Nepal, and (c) royalty cap in terms of technology transfer. Nepal Rastra Bank, the central bank of Nepal, has recently issued Foreign Investment and Foreign Loan Management Bylaws, 2021, which provides a form of automatic route for foreign investors, whereby prior approval of the central bank will not be required to invest in Nepal (except for investment through share purchase).

As such in recent years, Nepal has witnessed a growth in investment and has seen greater private participation. It is pertinent to note that, after the enactment of FITTA, FDI had increased by 134.5% during the first eight months of FY 2019/20 in comparison with the same period in the previous year.<sup>2</sup> Although the laws have opened many sectors for foreign investment, a multi-agency approval process, an ineffective one-stop service center, capital markets being at a nascent stage, and the vulnerabilities of the banking sector have negatively affected the foreign investment environment in Nepal to some degree.

<sup>2</sup> Economic Bulletin, Ministry of Finance (2020),

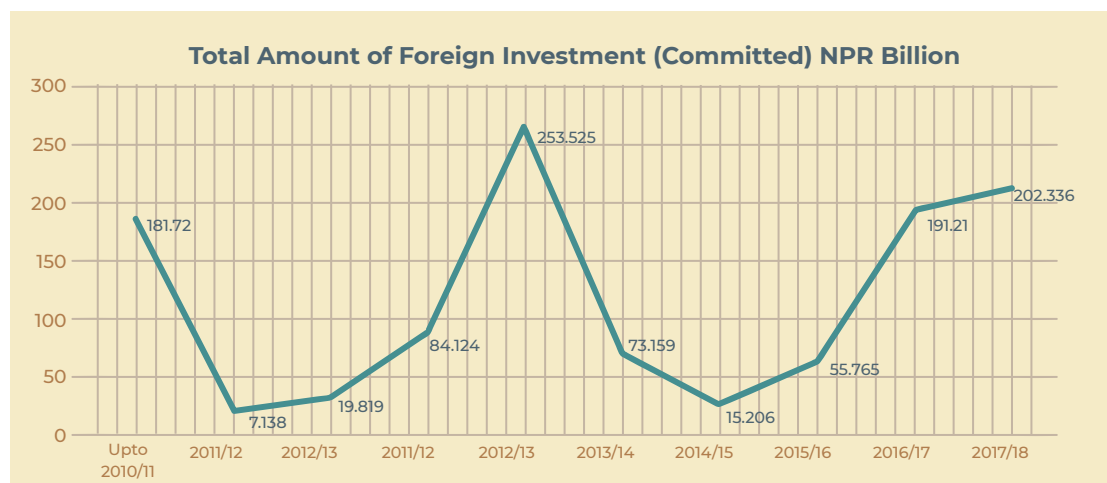
[https://mof.gov.np/uploads/document/file/Economic%20Bulletin%201-9%20Baisakh\\_20200519032609.pdf](https://mof.gov.np/uploads/document/file/Economic%20Bulletin%201-9%20Baisakh_20200519032609.pdf).

In addition to the afore-mentioned statutes, the Government of Nepal has issued Foreign Investment and Transfer of Technology Regulation, 2021 incorporating procedural aspects pertaining to foreign investment such as - (a) documentation

## 1.3. FDI Inflow in Nepal

### 1.3.1. FDI Amount

The Ministry of Industry, Commerce and Supplies has published a statistics on the total FDI amount committed by foreign investors within the last decade from FY 2009/10 to FY 2019/20.



<sup>3</sup> Study Report on FDI in Nepal, Ministry of Industry, Commerce and Supplies (2021),

[http://moics.gov.np/uploads/shares/news\\_notice/Study%20Report%20on%20FDI\\_Nepal%202021.pdf](http://moics.gov.np/uploads/shares/news_notice/Study%20Report%20on%20FDI_Nepal%202021.pdf).

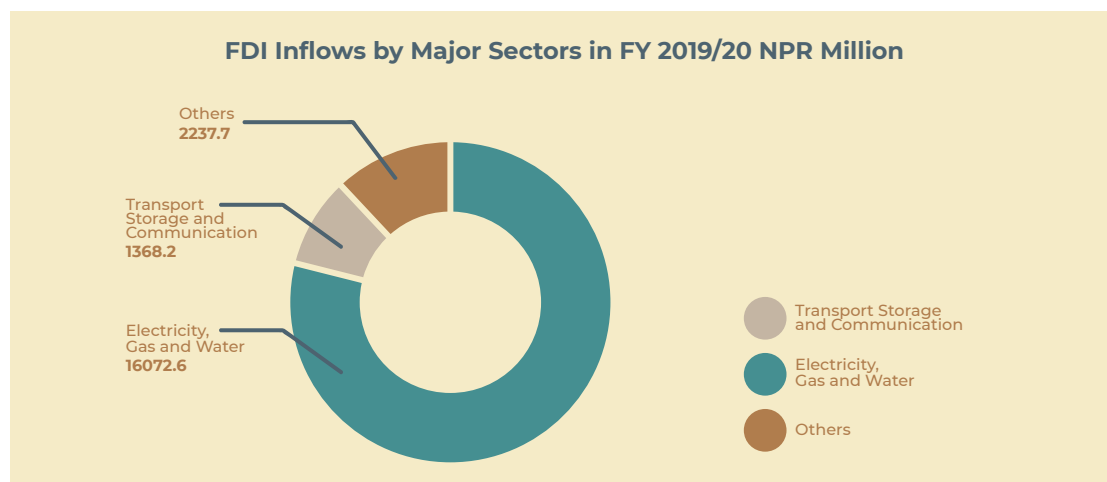
Source: Ministry of Industry, Commerce and Supplies

As per the above data, the total FDI amount committed by foreign investors has been increasing since the last two fiscal years – FY 2018/19 and FY 2019/20.<sup>3</sup>



### 1.3.2. Sector Specific FDI Inflow

In terms of FDI in permissible sectors, Nepal has attracted the most FDI in energy sector, followed by tourism, storage, and communication sectors in FY 2019/20. NRB has published a survey report presenting sector specific FDI inflows in Nepal.<sup>4</sup>



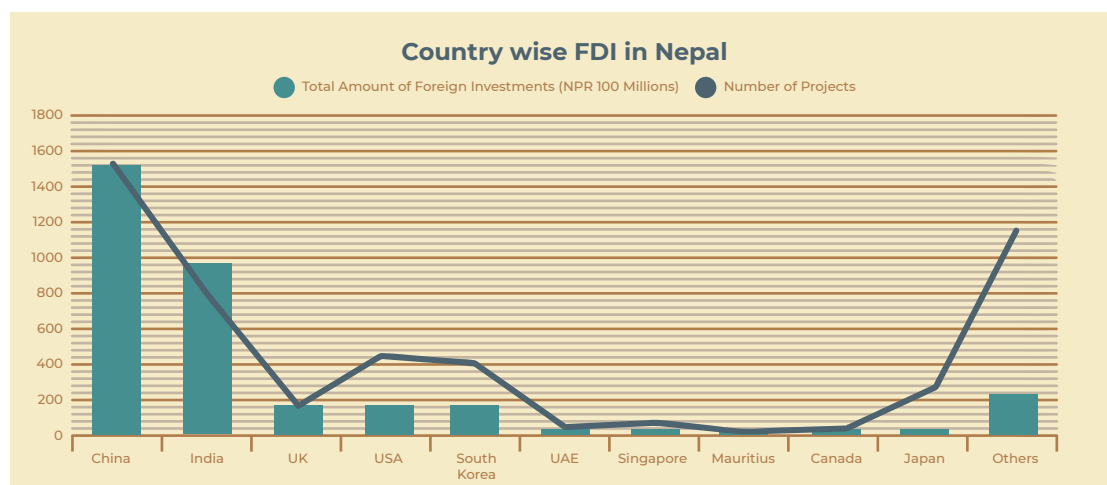
<sup>4</sup> Survey Report on Foreign Direct Investment in Nepal, Nepal Rastra Bank (2021),

[https://www.nrb.org.np/contents/uploads/2021/04/FDI-2018-19\\_April-2021.pdf](https://www.nrb.org.np/contents/uploads/2021/04/FDI-2018-19_April-2021.pdf)

Source: Nepal Rastra Bank

### 1.3.3. Country wise FDI in Nepal

Till FY 2019/20, the highest number of FDIs is seen to have been committed by China in around 1711 projects with an investment commitment of NPR 15 Billion.<sup>5</sup>



<sup>5</sup> Study Report on FDI in Nepal, Ministry of Industry, Commerce and Supplies (2021),

[http://moics.gov.np/uploads/shares/news\\_notice/Study%20Report%20on%20FDI\\_Nepal%202021.pdf](http://moics.gov.np/uploads/shares/news_notice/Study%20Report%20on%20FDI_Nepal%202021.pdf)

Source: Ministry of Industry, Commerce and Supplies

## 1.4. Doing Business in Nepal

Nepal is among the top 3 countries favorable for investment in South Asia.<sup>6</sup> Nepal has managed to improve its score on five indicators amongst the ten indicators used by the World Bank to evaluate the ease of doing business in various countries. With the expanding coverage of the Credit Bureau, Nepal has managed to improve its credit access scoring to 75 points. Nepal has also managed to improve its score in enforcing contract to 46 points which is evaluated based on the number of days, cost and the quality of judicial process in relation to enforcement of contracts. Furthermore, Nepal

has also improved its position in trading across borders and dealing with construction contracts in comparison to last year.

While Nepal has managed to retain its score in protecting minority investors and resolving insolvency, Nepal has slipped its position in difficulty of starting a business and registering a property contributed by the requirement of in person follow-ups, and time intensive multi-agency approval process. That is where on-ground support comes in handy.

<sup>6</sup> Doing Business, Nepal, World Bank Group (2020)

<https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nepal/NPL.pdf>

## CHAPTER 2

# Permissibility of FDI in Nepal



## 2.1. Positive and Negative Lists

FDI in Nepal is only permissible in industrial activities, and not in trading activities. There are two parameters to check the permissibility of FDI in Nepal – (a) the Negative List, and (b) the Positive List.

### (a) Negative Lists:

The proposed business activity must not be restricted for FDI by FITTA, termed as the Negative List. The sectors where foreign investors are not permitted to invest in Nepal include:

#### Industries in the Negative List

- (a) Poultry farming, fish farming, bee keeping, fruits, vegetable, oil seeds, pulse seeds, milk industry and primary agricultural production except large scale industries<sup>7</sup> related to these sectors which export more than 75% of their production.
- (b) Small and cottage industry.
- (c) Personal service business (such as hair salon, tailoring, driving, etc.).
- (d) Industry manufacturing arms and ammunitions, bullets, and shell, gunpowder, explosive materials, nuclear, biological, and chemical (N.B.C.) weapons, atomic energy, radio-active materials.
- (e) Real estate business (other than construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service.
- (f) Travel agency, guide, trekking, and mountaineering guide involved in tourism, and rural tourism including homestay.
- (g) Mass communication media (newspaper, radio, television, and online news), and motion picture of national language.
- (h) Management, account, engineering, legal consultancy service and language training, music training, computer training.
- (i) Consultancy service having foreign investment of more than 51%.

<sup>7</sup> Industries having fixed capital of above NPR 50 crore are categorized as large-scale industry.

### (b) Positive Lists:

Once the Negative List test is cleared, the proposed business then has to fall as an industry under IEA, known as the Positive List. IEA has categorized eight different types of industries with their respective sub-classifications:

Industry Classification	Industry Sub-classification <sup>8</sup>
1. Energy-based Industry	<ul style="list-style-type: none"> <li>Industries generating energy from hydropower, wind, solar, coal, natural oil and fuel, gas, biomass, or other sources</li> <li>Electricity transmission line</li> <li>Electricity distribution line</li> <li>Feasibility study of energy</li> </ul>
2. Agriculture and Forest Industry	<ul style="list-style-type: none"> <li>Fruit farming or processing</li> <li>Production of milk and dairy products</li> <li>Furniture industry</li> <li>Cold storage</li> <li>Paper production</li> </ul>
3. Infrastructure Industry	<ul style="list-style-type: none"> <li>Road, bridge, tunnel</li> <li>Ropeway, railway, tram, trolley bus, monorail</li> <li>Airport, cargo complex</li> <li>Business complex</li> <li>Irrigation infrastructure</li> </ul>
4. Tourism Industry	<ul style="list-style-type: none"> <li>Motel, hotel, resort, bar, and restaurants</li> <li>Travel agency, tour operator, healing center, casino, spa</li> <li>Adventurous tourism: trekking, skiing, paragliding, canoeing, mountaineering, rafting, hot air ballooning</li> <li>Construction and operation of cable car</li> <li>Cruise, water entertainment and boating</li> </ul>
5. Information, Communication and Technology Industry	<ul style="list-style-type: none"> <li>Internet Service Provider</li> <li>Software development</li> <li>Data center, data mining, cloud computing</li> <li>Broadband infrastructure, telecom tower, optical network, satellite network</li> <li>Business process outsourcing, knowledge process outsourcing</li> </ul>
6. Service-oriented Industry	<ul style="list-style-type: none"> <li>Investment companies</li> <li>E-commerce</li> <li>Business incubation service</li> <li>Construction business</li> <li>Hospitals, nursing homes, clinic, polyclinic, physiotherapy clinic</li> </ul>
7. Manufacturing Industry	<ul style="list-style-type: none"> <li>Industries manufacturing products by using or processing raw materials such as cement industry, plastic industry</li> </ul>
8. Mines and Minerals Industry	<ul style="list-style-type: none"> <li>Industries producing petroleum products, natural gas and fuel</li> </ul>

<sup>8</sup> Please note that this is not an exhaustive list of industry sub-classifications.

Please note that FDI in BFIs and insurance companies do not fall under the afore-mentioned regime and are respectively governed by the central bank and the Insurance Board.

### Example 2.1

A foreign investor wants to invest in coffee processing business in Nepal. Is the foreign investor permitted to invest?

Coffee processing is not restricted for foreign investment under the Negative List. Now, we need to check whether coffee processing is classified as an industry under the Positive List. Coffee processing is classified as an Agriculture and Forest Industry. Hence, foreign investment is permissible for operating coffee processing business in Nepal.

## 2.2. Investment Threshold

A foreign investor must invest approx. half a million USD<sup>9</sup> in the proposed business. The investors are required to invest the said amount in convertible foreign currency.

## 2.3. Forms of Foreign Investment

Forms of Foreign Investment	How Foreign Investment Can Be Done?
Equity Investment	Formation of a new company or subscribing or purchasing the shares of an existing company.
Asset Purchase	Purchasing the assets of existing companies.
Lease Financing	Lease of ships, aircraft, machinery & equipment, construction equipment, or other similar equipment.
Technology Transfer	By – (a) transferring patent, design, trademark, goodwill, user's license, formulas and processes; (b) franchising; (c) sharing technical know-how; (d) providing technical advisory, management and market service.
Loan Investment	Foreign financial institutions can provide loan to a foreign investment company in Nepal upon – (a) concluding project loan agreement or project finance agreement, and (b) obtaining regulatory approvals.
Branch Industry	Establishment or expansion of branch industry in Nepal by a foreign industry.

<sup>9</sup> The investment threshold is NPR 50 million, which is equivalent to approx. USD 43 Million at the exchange rate of USD 1 = NPR 118.

## 2.4. Approving Authorities

The FDI regime in Nepal is still driven by an approval-based mechanism. Any foreign investor has to obtain FDI approval from regulatory authorities before investing in Nepal. FITTA has prescribed two authorities for approving foreign investment depending on the capital being invested.



Investment Size	Approving Authority
NPR 6 Billion (approx. USD 51 Million) or Below	DOI
Above NPR 6 Billion (approx. USD 51 Million)	IBN

Before the enforcement of NRB Bylaws, foreign investors had to obtain two FDI approvals – (a) approval from DOI or IBN to invest, and (b) approval from NRB to bring in the foreign currency in Nepal. The NRB Bylaws has now waived the requirement of obtaining NRB approval, i.e., foreign investors can invest in Nepal upon obtaining DOI/IBN approval and no NRB approval is required. This is a conditional waiver, and NRB approval will be required for investment through share purchase.

Please note that NRB should be notified of the investment before bringing in the foreign investment amount even if its approval is not required.

Forms of FDI		DOI/IBN Approval	NRB Approval
Equity Investment	Incorporation of a new company.	✓	
	Subscribing shares in an existing company.	✓	
	Purchasing shares of an existing company.	✓	✓
Asset Purchase		✓	
Lease Financing		✓	
Technology Transfer		✓	
Loan Investment <sup>10</sup>			✓
Branch Industry		✓	

<sup>10</sup> For loan investment, approval from the Ministry of Industry, Commerce and Supplies will be required.

## 2.5. Investment Timeline

FITTA Regulation has set the investment timeline on two bases: (a) DOI/IBN approval, and (b) commercial operation date of the business.

- (a) Foreign investors are required to bring in the FDI amount within one (1) year from the date of DOI/IBN approval in the following percentage:

S.N.	FDI Amount	% of Capital Injection
1.	NPR 50 Million (approx. USD 430,000)	25%
2.	NPR 50 Million to NPR 250 Million (approx. USD 430,000 to USD 2.2 Million)	15%
3.	NPR 250 Million to NPR 1 Billion (approx. USD 2.2 Million to USD 8.5 Million)	10%
4.	Above NPR 1 Billion (approx. USD 8.5 Million)	5%

<sup>11</sup> FITTA Regulation does not define commercial operation date.

- (b) Notwithstanding the above, FITTA Regulation requires investors to bring in 70% of the total FDI amount before commercial operation date<sup>11</sup> of the investee company, and the remaining 30% within two years thereafter.

### Example 2.5

A foreign investor obtained FDI approval from DOI on March 15, 2021 for NPR 60 Million. This means, the investor will have to bring in 15% of the FDI amount within 1 year, i.e., March 14, 2022. Let's assume, the investor brought the 15% amount on April 2, 2021. Also, the company achieved its commercial operation date within the said 1-year period, let's say on January 18, 2022. This means the company will have to invest remaining 55% (out of 70%) by January 18, 2022 and the other 30% by January 17, 2024.

In terms of foreign investment through purchase of shares of an existing company, the investment timeline is one year from the date of approval.

## 2.6. Sector Specific Investment Cap of FDI Amount

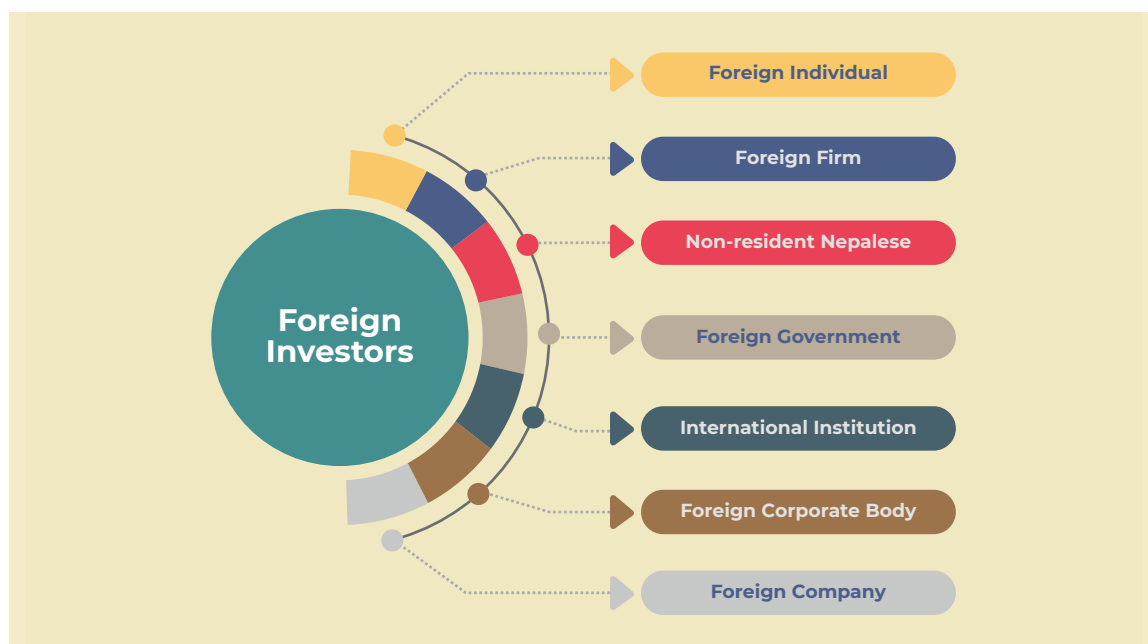
FDI in specific sectors such as BFIs, insurance, aviation, and information communication technology companies are permissible up to a certain percentage only. The below chart presents the cap of FDI amount in these businesses:

Sector	FDI Cap
BFIs	Minimum 20% and Maximum 85 %
Telecommunication	80%
Broadcast	25%
Aviation Companies (Aircraft Operation, Training, Repair and Maintenance, and Passenger Service Provider)	49% (Domestic airlines) 80% (International Airlines) 95% (Flying School) 95% (Repair and Maintenance Institutions)
Insurance Companies	80%
Consultancy Business	51%



## 2.7. Foreign Investor

FITTA recognizes the following persons and entities as foreign investors eligible to invest in Nepal:



## CHAPTER 3

# Commencement of Foreign Investment Business



## 3.1. Setting up a Foreign Investment Company

Stepwise Process	Regulatory Authority	Tentative Timeline
1. FDI approval	DOI or IBN	20 days
2. Company registration	OCR	7 days
3. Tax registration	IRD	1 day
4. Local business registration	Concerned ward office	1 day
5. Industry registration	DOI	15 days
6. Opening local bank account for bringing in FDI amount	Any Nepalese BFI of choice	2 days
7. Prior notification for bringing in FDI amount	NRB	1 day
8. Recording of FDI amount after investment	NRB	15 days

## 3.2. Investing in an Existing Company via Share Subscription or Share Purchase

Stepwise Process	Regulatory Authority	Tentative Timeline
1. FDI approval	DOI or IBN	30 to 45 days
2. FDI Approval (only for share purchase)	NRB	15 days
3. Prior notification for bringing in FDI amount	NRB	1 day
4. Closing of the Transaction	OCR	10 days
5. Recording of FDI amount after investment	NRB	15 days

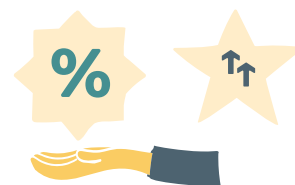
### Note:

In-principle approval of concerned regulatory authority may also be required in addition to FDI approval for investment in specific sectors. For example, in-principle approval from Nepal Telecommunications Authority will be required for investment in telecommunication sector.



## CHAPTER 4

# Taxation



### 4.1. Tax System of Nepal

The taxation regime of Nepal distributes the duties and power to levy taxes among the three tiers of the government. The tax is levied on income accrued or received from business, investment, employment, and windfall gains. In Nepal, the taxes are classified into two types – (a) direct taxes, and (b) indirect taxes. Direct taxes are those which are paid directly by the person or entity to the government. They are levied on income and profits. Indirect taxes are not paid directly by the consumer, i.e., person or entity, to the government. They are levied on goods and services and not on income and profits.

Both individual and companies are required to follow a uniform income year that runs from July 16 to the following July 15 corresponding to the Nepalese Fiscal Year. Income tax becomes payable by persons and entities (resident and non-resident) who have a taxable income in Nepal i.e., the total income less admissible deductions, benefits, and concessions. Pursuant to Income Tax Act of Nepal (ITA), the income derived from - (a) employment, (b) business, (c) investment, and (d) windfall gains is subject to taxation in Nepal.

### 4.2. Corporate Income Tax Rates Applicable to Entities

Industries	Normal Rate
1. General Corporate Tax	25%
2. Concessional Corporate Tax	
• Income earned from operation of manufacturing activities (excluding tobacco and alcohol products).	20%
• Income earned from agriculture, forestry, and mining industries.	20%
3. High-rate Corporate Tax	
• Income earned from Banks or financial institutions or General insurance business.	30%
• Income earned from manufacturing Tobacco and Alcohol.	30%
• Income earned from Telecom and Internet Services.	30%

## 4.3. Income Tax Concessions

The ITA has provided tax incentives based on - (a) nature of industry, (b) number of employees, and (c) location of industry, some of which are illustrated in the table below:

Industries	Concession Rate
<b>Industries in Special Economic Zone</b>	
Industry established in a Special Economic Zone in mountain areas or hill areas by the Government of Nepal.	100 % exemption up to 10 years from the date of operation of business and 50% rebate in subsequent years.
<b>Hydropower Projects</b>	
Entity having license to generate, transmit or distribute electricity will be provided concession if the commercial operation of electricity generation, transmission or distribution commences before April 12, 2024 (Provisions will be applicable for electricity generated from solar, wind or organic material).	100% exemption up to 10 years and 50% rebate in subsequent 5 years after the commercial operation date.
<b>IT industries and special industries which provide direct employment to following Nepalese citizens during the income year</b>	
≥100 Nepalese citizens	10% on the income derived
≥300 Nepalese citizens	20% on the income derived
≥500 Nepalese citizens	25% on the income derived
≥1000 Nepalese citizens	30% on the income derived
<b>Income derived by person engaged in:</b>	
Operation of tram, trolleybus.	40%
Construction & operation of ropeway, cable car, or overhead bridge.	40%
Construction or operation of road, bridge, tunnel, railway, airport.	50%
<b>Other Concessions</b>	
Income from companies listed in the capital markets and relating to – (a) manufacturing, (b) service industry, (c) hydropower generation, distribution, and transmission industry, and (d) entities mentioned in Section 11(3)(c) of ITA.	15 % on Applicable Rate/Normal Rate
Royalty from export of intellectual property by a person.	25% on Normal Rate
Income from sale of intellectual property by a person through transfer.	50% on Normal Rate
Income generated from IT industries related to software development, data processing, cybercafé, digital mapping that are established in geological, zoological, biotech related park and information technology park as prescribed by GON through Nepal Gazette.	50% on Normal Rate
Fruit based brewery manufacturing brandy, cider and wine in very underdeveloped area and undeveloped area.	40% and 25% respectively on the income derived for 0-10th years of operation
Income derived by an entity from the following: <ul style="list-style-type: none"> <li>Construction, operation, and transfer to GON of public infrastructures.</li> <li>Construction of powerhouse, generation and transmission of electricity.</li> </ul>	20% on the income derived
Export Income Sourced in Nepal. (Note: Income of manufacturing industries earned from exporting manufactured goods is entitled to 35% further concession in addition to this concession.)	20% rebate on applicable taxes

*Note: Applicable Rate means the rate applicable to the special industry after concession under Section 11 (2)(b) of ITA and Normal Rate means the tax rate applicable to industry other than special industries.*

## 4.4. Withholding Taxes/ TDS Applicable to Foreign Investors

Foreign investors are required to pay TDS at certain rates in Nepal, depending on the nature of income they have derived from their investments. This includes:

Income Head	Rate of TDS
Dividends	5%
Royalties under technology transfer	15%
Service Fees	15%

## 4.5. Withholding of Capital Gains Tax on Sale of Shares

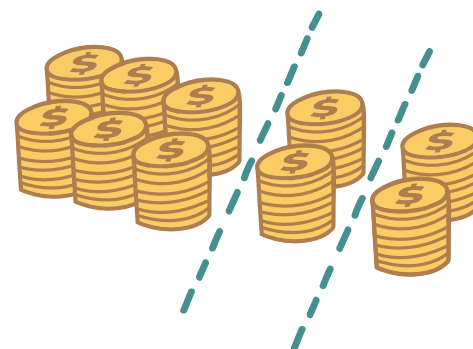
Sale of shares owned by a foreign investor in a Nepalese entity is subject to capital gains tax of 25% in their profit, irrespective of whether such sale is made to a foreign or a local person. The Nepalese entity has the obligation to withhold and pay the capital gains tax on behalf of the foreign investor in cases of transaction made directly between the buyer and the seller. However, in secondary market transactions, the Nepalese entity is exempted from the obligation to withhold.

## 4.6. Local Taxes/Rental Tax

Local business taxes are levied by the concerned local authority for carrying out business activities in the jurisdiction of the municipalities. The rate of local business tax is determined by the nature of the industries. Rental tax is paid to the concerned authority on rental income. It is calculated on the basis of the rental amount. For the purpose of local tax, the entity must obtain local business registration from the concerned local authority. Local business tax is to be paid at the concerned local authority every year. The rate of local tax is different for different locations and depends on the nature of the business.

## 4.7. Double Taxation Avoidance

The ITA provides relief against double taxation, i.e., taxation in Nepal as well as in the native country of the foreign investor, as long as Nepal has a DTAA with the concerned country. Nepal has entered into DTAA with 11 States namely - India, Bangladesh, Thailand, Sri Lanka, Mauritius, Austria, Pakistan, China, South Korea, Norway, and Qatar. Some of the common features relating to various income heads and their taxing authorities under Nepal's DTAA include:



Income Heads	Applicable Jurisdiction	Applicable Rate in Nepal
Profits of enterprise	Only taxed in the country of incorporation of the company or where the Permanent Establishment is established.	25%
Dividends	Both	<ul style="list-style-type: none"> <li>5% - if the beneficial owner of shares is a company holding at least 25% of shares of company distributing dividend.</li> <li>10% - if the beneficial owner of shares is a company holding at least 10% of shares of company distributing dividend.</li> </ul>
Interest	Both	10-15%
Royalties	Both	15%
Capital Gains	Country where the Company whose shares are being transferred is a resident.	25%

In addition to this, Nepal provides relief against international double taxation to residents by granting foreign tax credits. Double tax relief can be claimed under the provisions of existing DTAA's.

## 4.8. Value Added Tax (VAT)

Value Added Tax (VAT) is the tax based on goods and services. This tax is levied on the sale, exchange, transfer, and import of all goods and services apart from those specified by the law as tax-exempt. This means that VAT encompasses all types of goods and services produced in or imported into the country apart from those listed as tax-exempt by the law. VAT is considered as an improvised form of sales tax. This tax is imposed on different levels of value addition in the production and distribution process of goods and services. In short, the difference between the purchase price and the sales price is the value added.

VAT is levied at a flat rate of 13%, which is applied to the invoice value. Certain specified goods are outside the scope or exempt from VAT. Exports of both goods and services are taxed at 0% (zero percent). To avoid double taxation, a credit is given for VAT paid on goods and services used for the purpose of making any taxable supply (Input VAT). A credit is also given for VAT paid in respect of certain exempt supplies, e.g., exports. The principal mechanism for collecting the tax requires the taxable supplier to charge VAT on the goods or services supplied (Output VAT) to take credit for VAT paid on business expenditure (Input VAT), and to pay the net tax over to the authorities.



## CHAPTER 5

# Protection Of Investment And Investors

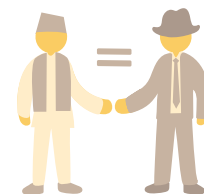


## 5.1. Bilateral Investment Treaties

Nepal has entered into BITs with four countries - France (1985), Germany (1988), the United Kingdom (1993), and Finland (2011). Nepal has also signed BITs with Mauritius (signed 1999) and India (signed 2011), which are yet to come into force. The major protections for investment and investors under these BITs include:

Protection under BITs	Provisions
National Treatment	Foreign investment or investors are entitled to treatment no less favorable than which is provided to its local investment or investors.
Most Favored Nation Treatment	Foreign investment or investors are entitled to treatment no less favorable than which is provided to investors or investment of any other third State.
Fair and Equitable Treatment of Investments and Returns of Investors	<ul style="list-style-type: none"> <li>• Protection against – (a) denial of justice in judicial or administrative proceedings, (b) fundamental breach of due process of law, (c) discrimination based on gender, race, religion, or other grounds, and (d) other abusive treatment, coercion, duress, or harassment.</li> <li>• Protection against expropriation (direct and indirect) being an act of the state of disintitling the investors of their investment property for public use or benefit.</li> </ul>
Compensation for Losses of Investment	Compensation for losses caused to investment due to war, armed conflict, national emergency, insurrection, riots, and others.
Repatriation of Investment and Returns	Capital used to maintain and increase investments, net profits including dividends and interest, repayment of any loan, payment of royalties and service fees, proceeds from sale of shares, and others.
Subrogation	Where one contracting party makes payment under indemnity against non-commercial risks (risks such as political or foreign exchange, etc.) with respect to losses of investment caused in the territory of another State, and the said contracting party assumes the right or claim payment from the other contracting party.
Dispute Settlement Mechanisms of Investors	<ul style="list-style-type: none"> <li>• Provides mechanisms for State disputes and also disputes between contracting parties.</li> <li>• Entry and sojourn of personnel - allows natural person or personnel employed by foreign companies and/or of foreign state to enter and remain in its territory for investment activities.</li> </ul>

## 5.2. Protection to Investors under FITTA 2019



Benefits	Provisions
Visa	A foreign citizen visiting Nepal for conducting study, research or survey for foreign investment will be provided with a non-tourist visa for up to six months.
	The foreign investor or authorized representative of the foreign investor and their family members will be granted business visa to reside in Nepal.
	Business visa will be granted to two authorized representatives (and their family members) of foreign investors that have invested 25% of the total investment amounting to USD One Million or more.
	Foreign experts, technicians, or managerial employees working in a foreign investment company will be eligible for a non-tourist visa and a work permit.
Change in Law Protection	Foreign investors are guaranteed with change in law protection whereby foreign investments approved pursuant to previous foreign investment laws will be governed by those laws and no change will be made without the consent of foreign investors in a manner detrimental to any facilities being enjoyed by them under those laws.
Protection against Nationalization	FITTA 2019 protects foreign investors against nationalization of the companies they have invested in. It also protects foreign investors against direct and indirect expropriation of the companies except for public purpose. There is no clarity as to what constitutes indirect expropriation under Nepalese law. Usually, BITs tend to demarcate the scope and definition of indirect expropriation.
Repatriation of Investment and Returns	Foreign investors have the right to repatriate their investment and returns in convertible foreign currency. Provisions on repatriation are dealt in detail in Chapter 6.
Land	DOI or IBN will provide necessary recommendation, coordination, and facilitation with the concerned local authorities for purchase or arrangement of land if the foreign investor fails to acquire the land by itself, for the purpose of operating the concerned business.
Authorization	A foreign investor can authorize any person to carry out any act on its behalf. Previously, this position was unclear.
National Treatment	<p>FITTA 2019 ensures that the management, maintenance, utilization, transfer, or sale of investment made by foreigners be at par with the investment made by a Nepalese person, till the time such foreign investment remains in Nepal. Following protections are also granted to foreign investors under national treatment by FITTA:</p> <ul style="list-style-type: none"> <li>• Freedom to determine price of goods and services subject to prevailing laws.</li> <li>• Shall not be prohibited to trade, as prescribed, within the limits of its industry.</li> <li>• Shall not be prohibited to repatriate profit, withdraw investment, pay interest, and repay principal amount of loan.</li> </ul> <p><b>Exceptions of National Treatment:</b></p> <ul style="list-style-type: none"> <li>• Compulsory licensing of intellectual property mentioned in the agreement concluded under WTO.</li> <li>• Benefits enjoyed by local industries under public procurement law.</li> <li>• Government subsidy or concession.</li> <li>• Non-commercial services provided by the government.</li> <li>• Financial services adopted or managed by the government for protection of investors.</li> <li>• Special treatment provided by the government as a party to any regional or multi-sectorial organization.</li> <li>• Conditions prescribed by regulatory authorities in terms of repatriation of investment, payment of loan (including, principal, interest, and fee), or payment of service fee outside Nepal.</li> <li>• Protection of public health, animals, plant, or environment.</li> </ul>

## CHAPTER 6

# Repatriation of Investment And Returns



## 6.1. Right of Repatriation

Foreign investors have the right to repatriate their investment and returns upon obtaining regulatory approvals and payment of applicable taxes. Foreign investors can repatriate – (a) profits or dividends received from the investee company, (b) share sale proceeds upon sale of shares owned in the investee company, (c) royalty under technology transfer, (d) return of capital on liquidation of the investee company, (e) lease amount under lease financing, and (f) any compensation or indemnity amount upon final settlement of dispute in Nepal.

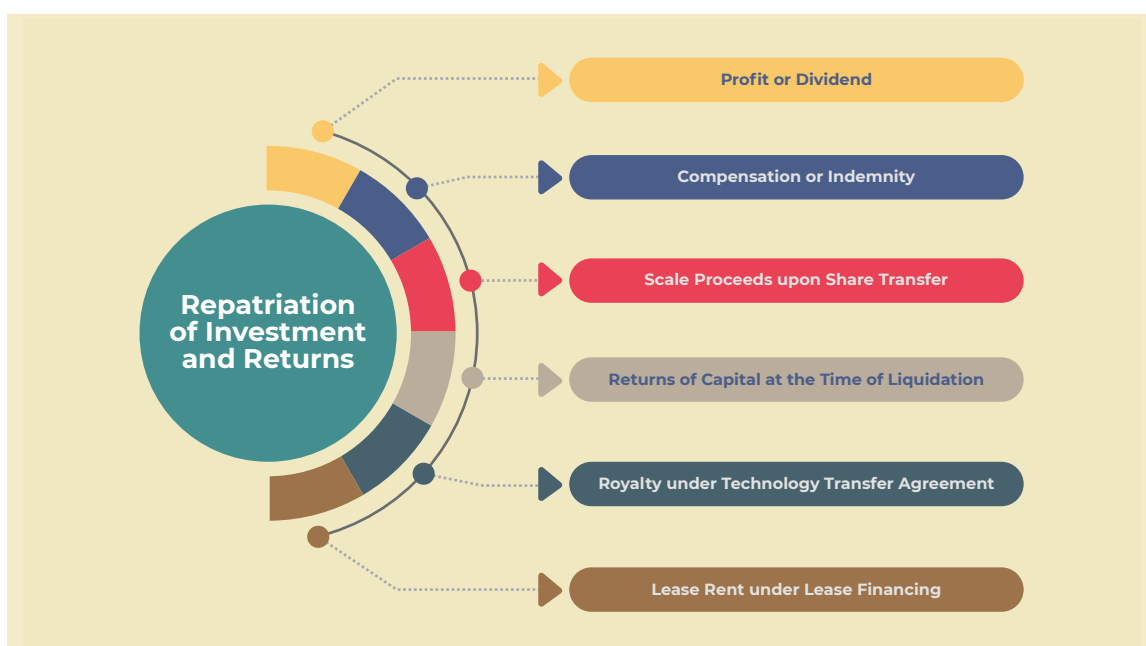


Fig. Repatriation of Investment and Returns

## 6.2. Regulatory Approvals

Foreign investors must obtain approvals from – (a) DOI or IBN, and (b) NRB for repatriating their investment and returns.

Approvals for Repatriation	DOI	IBN	NRB
For approved investment of NPR 6 Billion (approx. USD 51 Million) and below	✓		✓
For approved investment above NPR 6 Billion (approx. USD 51 Million)		✓	✓

After obtaining these regulatory approvals, investors can repatriate the amount at the prevailing exchange rate. The amount can be repatriated either (a) in the same foreign currency which the foreign investor had brought in, or b) in a different foreign currency, for which approval from NRB will be required.

## 6.3. Payment of Tax

Foreign investors are permitted to repatriate their investment amount only after payment of applicable taxes.

Applicable Tax Rates	
Dividends	5%
Royalties	15%
Aircraft Lease	10%
Share Sale Proceeds	5%
Return of Capital	N/A
Service Fees	15%

## 6.4. Restriction on Repatriation

Foreign investors are not allowed to repatriate their investment amount during the 1st year of their investment. NRB sets out this condition at the time of granting its approval.

## 6.5. Fixed Cap on Royalty Repatriation

FITTA Regulation have prescribed ceiling on repatriation of royalty for two kinds of categories: (a) all kinds of technology transfer agreements except those for usage of trademark, and (b) technology transfer agreements entered for usage of trademarks.

### (a) For all kinds of technology transfer agreements except usage of trademarks

Royalty Based On	For Local Sales	For Export
Lump sum or gross sales revenue	Up to 5% of gross sales revenue excluding taxes	Up to 10% of gross sales revenue excluding taxes
Net profit	Up to 15% of net profit	Up to 20% of net profit

### (b) For usage of trademarks

Industry	For Local Sales	For Export
Alcohol and tobacco industries	Up to 2% of gross sales revenue excluding taxes	Up to 5% of gross sales revenue excluding taxes
Other industries	Up to 3% of gross sales revenue excluding taxes	Up to 6% of gross sales revenue excluding taxes

In case of technology transfer for commencing the operations of an industry, the law has given flexibility to the parties to cap the royalty or other fees as per their agreement.



## 6.6. Statistics of Repatriation of Investment and Returns

The table below shows the statistics of last eight fiscal years in terms of repatriation of dividends and share sale proceeds:

Fiscal Year	No. of Approvals	Dividend (in NPR)	Share Sale Proceeds (in NPR)
2070/71	N/A	7,816,087,885.75	N/A
2071/72	N/A	5,718,562,753.25	90,985,094.00
2072/73	N/A	6,214,093,728.16	636,322,070.55
2073/74	N/A	17,102,598,578.39	N/A
2074/75	N/A	39,530,424,679.99	1,702,911,124.01
2075/76	38	27,782,994,969.74	1,512,099,134.92
2076/77	40	12,903,086,333.42	N/A
2077/78	14	18,237,299,065.07	411,262,892.38

Source: Ministry of Industry, Commerce and Supplies (2021)

## CHAPTER 7

# Dispute Settlement Mechanism



## 7.1. Dispute Settlement via Arbitration

FITTA provides that the parties to an investment agreement have the autonomy to choose its governing law and dispute settlement mechanism. This rule is relevant for foreign investment agreements covering share purchase agreement, share subscription agreement, joint venture agreement, shareholders agreement, loan agreement, franchise agreement, and technology transfer or knowhow agreement.

In relation to cross border transactions, it is common that the laws of England and Wales are opted as the governing law. While application of UNCITRAL, ICC, LCIA, CIETAC, HKIAC arbitration rules are common, there is an increasing trend of adopting SIAC as the arbitration rules and Singapore as the seat of arbitration.

## 7.2. Dispute Settlement Provisions if the Investment Agreement is Silent

If the transaction documents are silent on dispute settlement mechanism, FITTA provides for default statutory provisions as follows:

Applicable Tax Rates	
Governing Law	Laws of Nepal
Seat of Arbitration	Kathmandu, Nepal
Arbitration Rules	UNCITRAL Rules of Arbitration
Substantive Law	Laws of Nepal

Please note that amicable settlement procedures before DOI with the timeline of 45 days needs to be exhausted before arbitration proceedings can be commenced.

## 7.3. Enforcement of Domestic Arbitral Award

The parties are required to enforce an arbitral award within 45 days from the date of receipt of the award. If the concerned party does not enforce the award, the other party may file an application at the concerned District Court for its enforcement. The application should be filed within 30 days from the date of expiry of the initial 45 days period.

The arbitral award can be challenged before the concerned High Court within 35 days from the date of the receipt of the award.

Grounds for Challenging an Arbitral Award
The party to the dispute lacks capacity to conclude the agreement pertaining to dispute settlement.
Such agreement is invalid under – (a) the concerned governing law, or (b) Nepalese law if governing law is not clear in the agreement.
The applicant challenging the award has not been served a due notice – (a) to appoint its arbitrator, or (b) about the proceedings of the arbitration.
The award is made on issues not submitted before the arbitrator(s).
The arbitrator acts in excess of its authority.
The appointment of arbitrator(s) or the arbitration proceedings is against the agreement or the Arbitration Act (in case of absence of such agreement).

The High Court may either quash the award or pass an order to arbitration tribunal for re-arbitration. The order of the High Court can be further challenged before the Supreme Court of Nepal if the award violates fundamental rights of a party enshrined under the Constitution of Nepal.

## 7.4. Recognition and Enforcement of Foreign Arbitral Award

A foreign arbitral award is recognized and enforceable in Nepal subject to following two conditions:

The arbitral award has been made in the country which is a state party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

The award is made in relation to disputes which are deemed as commercial in Nepal. Nepal is a state party to the New York Convention and thus, adopts the principle of reciprocity in terms of recognition and enforcement of foreign arbitral awards.

Nepal is a state party to the New York Convention and thus, adopts the principle of reciprocity in terms of recognition and enforcement of foreign arbitral awards.

Vis-à-vis the afore-mentioned conditions, foreign award should also satisfy the below conditions as per the Arbitration Act for its recognition and enforceability in Nepal:

The appointment of concerned arbitrator and the award has been made in accordance with the laws and procedure agreed in the agreement.

The award is made in relation to disputes which are deemed as commercial in Nepal. Nepal is a state party to the New York Convention and thus, adopts the principle of reciprocity in terms of recognition and enforcement of foreign arbitral awards.

The parties to dispute have been duly notified about the arbitration proceedings.

The award should be rendered only on the matter strictly entrusted to the arbitrator and in accordance with the provisions of the agreement.

The award should have become final and binding upon the parties as per the laws of the country where arbitration proceedings have been conducted. The laws of the country of the applicant or laws of the country of the venue of arbitration do not contain any provisions under which an arbitration award rendered in Nepal cannot be enforced.

The application for the enforcement of arbitral award should have been filed before the court of Nepal within ninety (90) days from the date of arbitral award.

For the enforcement of foreign arbitral award, an application has to be submitted to the High Court within 90 days from the date of the award. If the High Court deems that above stated conditions are satisfied, then it forwards the award to the concerned District Court for enforcement.

## 7.5. Restrictions and Enforcement of Foreign Arbitral Award

Arbitration Act provides additional substantive provisions which need to be satisfied for enforcement of foreign arbitral award:

### Non-enforceability of Foreign Arbitral Award

The award should have been given in relation to a commercial dispute. While there is no statutory definition for commercial disputes for the purpose of Arbitration Act, Nepalese courts have interpreted commercial disputes as disputes concerning investment, construction, supply of goods, insurance and banking and other commercial transaction.

The foreign award should not be against the public policy of Nepal.

## 7.6. Recognition and Enforcement of Foreign Judgments in Nepal

Mutual Legal Assistance Act, 2070 (2014) is the principal legislation governing enforcement of foreign judgments in Nepal. It stipulates the requirement of a bilateral treaty as a condition precedent for such enforcement. Nepal is yet to sign such treaty for enforcement of foreign judgements.

# 50 FDI QUESTIONS ANSWERED



## ENTRY OF FOREIGN INVESTMENT

### 1. Is foreign investment permissible in all sectors?

Foreign investment is permissible only in industrial activities and not in trading activities. Such industrial activities – (a) should not be restricted for foreign investment, and (b) should be eligible for classification as an industry.

### 2. What constitutes trading activities?

Trading includes buying and selling of goods. A foreign person or entity cannot simply import finished goods from a foreign country and sell them in Nepal. Prevailing market practice shows two types of trading - wholesale trading and retail trading.

### 3. What are the sectors restricted for foreign investment?

- (a) Poultry farming, fish farming, bee keeping, fruits, vegetable, oil seeds, pulse seeds, milk industry and primary agricultural production except large scale industries related to these sectors which export more than 75% of their production.
- (b) Small and cottage industry.
- (c) Personal service business (such as hair salon, tailoring, driving, etc.).
- (d) Industry manufacturing arms and ammunitions, bullets, and shell, gunpowder, explosive materials, nuclear, biological, and chemical (N.B.C.) weapons, atomic energy, radio-active materials.
- (e) Real estate business (other than construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service.
- (f) Travel agency, guide, trekking, and mountaineering guide involved in tourism, and rural tourism including homestay.
- (g) Mass communication media (newspaper, radio, television, and online news), and motion picture of national language.
- (h) Management, account, engineering, legal consultancy service and language training, music training, computer training.
- (i) Consultancy service having foreign investment of more than 51%.

### 4. What are the classifications of industry?

There are eight industrial classifications – (a) Energy-based Industry, (b) Agriculture and Forest Industry, (c) Infrastructure Industry, (d) Tourism Industry, (e) Information, Communication and Technology Industry, (f) Service-oriented Industry, (g) Manufacturing Industry, and (h) Mines and Mineral Industry. The sub-classifications of these industries are outlined in Section 2.1 of Chapter 2.

## 5. Is 100% foreign investment permissible in Nepal?

Generally, foreign investors can have full ownership in the business they are investing in, for example – hydropower companies, tech companies, cement industries etc. However, 100% foreign investment is not allowed in certain sectors such as BFIs, insurance, and telecommunication companies. Please refer to Section 2.6 of Chapter 2 for more details on ownership percentage in these sectors.

## 6. Is there a minimum threshold of ownership percentage by foreign investor?

Except for certain sectors such as BFIs, insurance, and telecommunication companies, there is no minimum percentage requirement for foreign investors to own a company in Nepal.

However, foreign investors are required to invest a minimum amount of half a million USD regardless of their ownership percentage in the company they are investing in.

## 7. Is there a preferred jurisdiction to invest in Nepal?

In terms of availing investment protections and avoidance of double tax conferred by BITs and DTAA's respectively, foreign investors tend to invest in Nepal from the countries with which Nepal has concluded these agreements. Nepal has entered into BITs with France, Germany, UK, and Finland. Similarly, Nepal has concluded DTAA's with India, Bangladesh, Thailand, Sri Lanka, Mauritius, Austria, Pakistan, China, South Korea, Norway, and Qatar.

## 8. Is there a provision of automatic route in Nepal?

Automatic route has recently been provisioned by the central bank. Under the automatic route, foreign investors do not require central bank's approval for investing in Nepal. There is only one exception to this provision – foreign investment via share purchase will require central bank's approval.

Please note that the primary investment approval of concerned regulatory authority, i.e., DOI or IBN will still be required.

## 9. What regulatory approvals are required to invest in Nepal?

Generally, a single approval from Department of Industries or Investment Board of Nepal is required. An additional approval from concerned line authority may also be required depending on the nature of proposed business. Similarly, approval from NRB will be required for foreign investment via share purchase.

Please note that it is mandatory to notify NRB of the foreign investment after obtaining DOI/IBN approval.

## 10. When are the approvals from DOI and IBN required?

If the proposed investment is up to NPR Six Billion (approx. USD 51 Million) or below, FDI approval from DOI is required, whereas for investments above NPR Six Billion, approval from IBN will be required.

## 11. What are the required documents for obtaining FDI approval from DOI/IBN?

- (a) Project proposal outlining details of the project.
- (b) Joint Venture Agreement, where there is more than one investor.
- (c) Biodata and copy of passport if the foreign investor is a natural person.
- (d) If the foreign investor is an entity –
  - (i). Certificate of incorporation,
  - (ii). Charter documents such as Memorandum of Association, Articles of Association, Articles of

- Incorporation, or Company Bylaws,
- (iii). Details of direct shareholders, indirect shareholders (including their names, addresses and shareholding percentage) and directors,
- (iv). Company profile stating the name of the entity, address of registered office, business objectives, share capital, number of shareholders, and names of key management personnel,
- (v). Decision of the board of directors for investing in Nepal,
- (vi). Copies of passport of directors,
- (vii). Latest audit report (not applicable for investment amounting to USD One Hundred Million or less).
- (e) Financial Credibility Certificate issued by the concerned bank of the foreign investor stating that the investor has sufficient bank balance.
- (f) Power of Attorney if the foreign investor cannot be present in person in Nepal for application process.

## 12. Why is it necessary to give details of indirect shareholders of a foreign investor?

This is because ultimate beneficiaries of a foreign investor are also defined as foreign investor by FITTA. However, this is not required if the investor is a publicly listed company.

## 13. Up till which layer of indirect shareholding should the details be given?

The laws do not specify till which layer of indirect shareholding should the information be given, but regulatory authorities require that the end beneficiary must be a government authority or a natural person. As long as corporate entities are found to be shareholders or indirect shareholders, details of their owners are required to be produced.

## 14. What are the documents to be submitted at NRB while notifying about foreign investment?

An application in the prescribed format is sufficient and no additional documents have to be submitted.

## 15. What documents are required for obtaining NRB approval in case of share purchase?

- A. Documents of the Local Company
  - (a) Application for bringing in the foreign investment amount in Nepal.
  - (b) Resolution of the board of directors of the company to obtain NRB approval.
  - (c) FDI approval from DOI or IBN.
  - (d) Company registration certificate, MOA and AOA.
  - (e) Industry registration certificate.
  - (f) Tax registration certificate.
  - (g) Business license, if any.
  - (h) Certificate issued by Credit Information Bureau certifying that the company is not blacklisted.
  - (i) Joint venture agreement, if any.
  - (j) Due Diligence Audit Report prepared by an auditor.
- B. Documents of the Foreign Investor
  - (a) Company registration certificate.
  - (b) Latest audit report and audited financial statements (only for investment above USD 10 Million).
  - (c) Details of ultimate beneficiary except for publicly listed companies (this includes names and percentage of ownership of all the direct and indirect shareholders of the foreign investor).
  - (d) Documents evidencing source of income of the foreign investor.
  - (e) Resolution of board of directors of the foreign investor to invest in Nepal.
  - (f) Certified copy of passport if the foreign investor is a natural person.

## 16. How long will it take to obtain FDI approval from DOI/IBN?

The statutory timeline for obtaining DOI/IBN approval is 15 days from the date of application. Practically, the said timeline may get lengthened. So, it is better to set a three months' timeline for completion of approval process.

## 17. Can FDI approval be cancelled?

The approved foreign investment may be cancelled by DOI/IBN if the foreign investor or the local company does not comply with - (a) the covenants specified in the FDI approval, and (b) the applicable laws relating to operation of the company.

## 18. By when should the investment amount be brought in Nepal?

The timeline for bringing in the investment amount is outlined in Section 2.5 of Chapter 2. Such investment amount should be brought in Nepal through banking channel.

## 19. Can the timeline for bringing in the investment amount be extended?

The regulatory authorities may extend the timeline on reasonable grounds.

## 20. What documents are to be produced to the local bank after sending the investment amount?

- A. Documents of the Local Company
  - (a) Application for depositing the investment amount in the company's bank account Resolution of the board of directors of the company to obtain NRB approval.
  - (b) Resolution of the board of directors of the company to have the investment amount deposited in the company's bank account Company registration certificate, MOA and AOA.
  - (c) FDI approval from DOI or IBN.
  - (d) Company registration certificate, MOA and AOA.
  - (e) Industry registration certificate.
  - (f) Tax registration certificate.
  - (g) Business license, if any.
  - (h) Certificate issued by Credit Information Bureau certifying that the company is not blacklisted.
  - (i) Letter notifying NRB about the foreign investment
- B. Documents of the Foreign Investor
  - (a) Company registration certificate
  - (b) Latest audit report and audited financial statements (only for investment above USD 10 Million)
  - (c) Details of ultimate beneficiary except for publicly listed companies (this includes names and percentage of ownership of all the direct and indirect shareholders of the foreign investor)
  - (d) Documents evidencing source of income of the foreign investor
  - (e) Resolution of board of directors of the foreign investor to invest in Nepal
  - (f) Certified copy of passport if the foreign investor is a natural person

## 21. Are foreign investors allowed to bring investment amount prior to the approval of DOI/IBN?

Yes, foreign investors can bring up to 3% of the paid-up capital of the investee company as pre-operational or feasibility study expenses before obtaining FDI approval from DOI/IBN or NRB.



## 22. Does a foreign investor need to obtain DOI/IBN approval for additional investment in the same company?

Additional investment is not covered under the automatic route and hence, the foreign investor has to again obtain DOI/IBN approval for investing in the same company in future.

## 23. Is it necessary that a foreign investor should mandatorily be a company?

No. Foreign individual, foreign firm, foreign government, international organization, development finance institution can also invest in Nepal as a foreign investor besides a foreign company

# POST INVESTMENT COMPLIANCES

## 24. What is the timeline for recording foreign investment at NRB?

Foreign investment should be recorded within six (6) months from the date of injection of the investment amount in Nepal. The local company gives application at NRB for such recording.

## 25. Why should foreign investment be recorded at NRB?

This is a mandatory statutory requirement. Foreign investment which has not been recorded at NRB are not given approval to repatriate the investment amount, its profits and/or sale proceeds in future.

## 26. What documents are required for recording foreign investment?

### A. Documents of the Local Company

- (a) Resolution of the board of directors of the company to record the foreign investment amount
- (b) FDI approval from DOI or IBN
- (c) Company registration certificate, MOA and AOA
- (d) Industry registration certificate
- (e) Tax registration certificate
- (f) Business license, if any
- (g) Latest audit report
- (h) Latest tax clearance certificate certifying that the company has paid all the taxes till the said fiscal year
- (i) Shareholder register certified by OCR
- (j) Foreign investment certificate issued by the concerned bank in Nepal
- (k) Joint venture agreement, if any

### B. Documents of the Foreign Investor

- (a) Company registration certificate
- (b) (Latest audit report and audited financial statements (only for investment above USD 10 Million)
- (c) Details of ultimate beneficiary except for publicly listed companies (this includes names and percentage of ownership of all the direct and indirect shareholders of the foreign investor)
- (d) Resolution of board of directors of the foreign investor to invest in Nepal
- (e) Certified copy of passport if the foreign investor is a natural person

## 27. Can a foreign national be appointed as a director of the Nepalese company where they have invested?

Yes. There is no restriction as such for a foreign national to become a director of a Nepalese company.

Furthermore, there is no limitation on the number of directors having foreign nationality. The entire board of directors can comprise of foreign nationals.

## 28. Are the directors who are foreign nationals required to be a resident in Nepal?

No, directors are not necessarily required to be a Nepalese resident.

## 29. Should the local company notify regulatory authorities in case of change in direct shareholding of its foreign investors?

The local company should notify DOI or IBN within thirty days from the date of change of direct ownership of its foreign investors. Usually, change in 50% ownership or above is notified to the regulatory authorities.

## 30. Should the local company submit any annual returns at regulatory authorities?

The local company should submit annual returns including - (a) audited financial statement at OCR, and (b) annual progress report at DOI within six months from the end of each Nepalese fiscal year, i.e., within mid-January.

## 31. By when should the local company obtain tax clearance certificate?

Tax clearance certificate must be obtained within three months from the end of each Nepalese fiscal year, i.e., within mid-October. The timeline can be further extended to three months, i.e., till mid-January.

# REPATRIATION OF FOREIGN INVESTMENT

## 32. What amounts can be repatriated by a foreign investor ?

Foreign investors can repatriate - (a) profits or dividends received from the investee company, (b) share sale proceeds upon sale of shares owned in the investee company, (c) royalty under technology transfer, (d) return of capital on liquidation of the investee company, (e) lease amount under lease financing, and (f) any compensation or indemnity amount upon final settlement of dispute in Nepal.

## 33. Is there a lock-in period for foreign investors for repatriating their investment?

Except for share sale proceeds and return of capital, a foreign investor can only repatriate the investment amount after completion of one year of investment. There is no lock-in period for repatriation of - (a) profits or dividends, (b) royalty, (c) lease amount, and (d) compensation or indemnity.

## 34. Are regulatory approvals required for repatriating investment amount?

Yes, approvals from DOI/IBN and NRB are required to repatriate the investment amount. For investments of up to NPR Six Billion (approx. USD 51 Million) or below, repatriation approval from DOI and NRB are required, whereas for investments above NPR Six Billion, approval from IBN and NRB will be required.

## 35. What documents are required for obtaining repatriation approval from DOI/IBN?

- (a) Resolution of the general meeting and board meeting of the company on repatriation of foreign investment or its proceeds
- (b) Shareholders' register and directors' register certified by OCR
- (c) Latest audit report and audited financial statements
- (d) Latest tax clearance certificate certifying that the company has paid all the taxes till the said fiscal year
- (e) FDI approval from DOI/IBN (f) Foreign investment certificate issued by the concerned bank of the company
- (f) In case of share sale proceeds, share purchase agreement, board resolution of the company recording the share sale and share sale deed
- (g) In case of royalty, invoice raised by the foreign investor and royalty amount verified by certified auditor as per the technology transfer agreement
- (h) In case of dividends, resolution of the general meeting, evidence of distribution of dividends by the company and audit report of the fiscal year of which the dividend is being distributed.

## 36. What documents are required for obtaining repatriation approval from NRB?

- (a) Repatriation approval from DOI/IBN
- (b) Resolution of the general meeting and board meeting of the company on repatriation of foreign investment or its proceeds
- (c) Letter issued by NRB on recording of foreign investment
- (d) Latest audit report and audited financial statements
- (e) Latest tax clearance certificate certifying that the company has paid all the taxes till the said fiscal year
- (f) Certificate issued by CIB certifying that the company is not blacklisted
- (g) Self-declaration by the foreign investor that it – (a) does not have matured credit in Nepalese BFIs, (b) shall not misuse foreign currency, (c) does not have outstanding tax liability, (d) shall comply with prevailing laws, and domestic and international legal provisions on anti-money laundering and prevention of terrorist activities
- (h) In case of royalty, invoice raised by the foreign investor and royalty amount verified by certified auditor as per the technology transfer agreement
- (i) In case of share sale proceeds, due diligence audit report stating per share purchase price
- (j) Documents evidencing payment of applicable taxes of the amount to be repatriated

## 37. How long does it take to obtain repatriation approval?

As per the statutory timeline, DOI/IBN and NRB should give their respective approvals within 15 days from the date of each application. However, the said timeline might get extended in practice.

## 38. What are the applicable tax rates for repatriation of investment amount?

The applicable tax rate for dividend is 5% and share sale proceeds is 25%. You may refer to Section 6.3 of Chapter 6 for more tax rates.

## 39. Can the approval obtained for dividend repatriation of a certain fiscal year be valid for dividend repatriation of next fiscal year?

No. Approvals from DOI/IBN and NRB will have to be obtained for each repatriation.

## 40. Can a foreign buyer pay share sale proceeds to a foreign seller in a foreign country?

Offshore payment of share sale proceeds is not permissible. The foreign buyer will have to send the share sale proceeds to the investee company in Nepal. The company will deduct applicable taxes from the share sale proceeds and then transfer the amount to the foreign seller in the foreign country.

## 41. Are buyers and sellers free to determine share sale proceeds?

Yes, but the share sale proceeds will have to be based on the valuation of the assets and liabilities of the investee company. DCF method of valuation is mostly used for this purpose.

## 42. Can foreign investors repatriate the investment amount in a different country?

The central bank generally grants approval to repatriate the investment amount in the bank account of the same foreign investor in the same country from which the investment amount has been brought in Nepal. There is also possibility of the central bank giving approval to repatriate the investment amount in a bank account of the foreign investor held in a different country.

## 43. Who provides foreign exchange facility to the foreign investor for repatriation of the investment amount?

Upon obtaining repatriation approvals from the regulatory authorities, commercial banks provide foreign exchange facility to the investors

# VISA FACILITY

## 44. What types of visas can foreign investors obtain?

Foreign investors can obtain - (a) non-tourist visa, (b) business visa, and (c) resident visa.

## 45. Who can obtain non-tourist visa?

A foreign citizen visiting Nepal for conducting study, research or survey for foreign investment will be provided with a non-tourist visa for up to six months.

## 46. Who is eligible to obtain business visa?

The foreign investor or authorized representative(s) of such investor and their family members will be granted business visa to reside in Nepal. Business visa is issued in the following manner:

- (a) For the foreign investor investing minimum threshold of half a million USD, business visa is granted to such investor or one authorized representative and their dependent family.

- (b) For the foreign investor investing NPR One Hundred Million (approx. USD 840,000) or above and 25% of such amount having been invested, business visa is granted to the investor or two authorized representatives of the investor and their dependent family.

## 47. Who is eligible to obtain resident visa?

For the foreign investor investing at least USD One Million or above and 50% of the investment amount having been invested, residential visa is granted to such or one authorized representative of such investor and his/her dependent family.

## 48. What are the concerned authorities for granting visas to foreign investors?

Firstly, foreign investors have to obtain recommendation from DOI to avail visa facilities. Visa is then granted by the Department of Immigration.

## 49. How long does it take to obtain visa recommendation from DOI?

It takes at least a month to obtain visa recommendation from DOI from the date of application. Department of Immigration then grants required visa on the same day of application.

## 50. What documents are to be produced at DOI for obtaining visa recommendation?

- (a) FDI Approval from DOI/IBN
- (b) Notarized copy of passport and the last visa granted
- (c) Certified shareholder register from OCR
- (d) Progress report of the company
- (e) Power of attorney issued to the authorized representative of the foreign investor if the foreign investor is an entity.
- (f) Corporate resolution of the local company on obtaining visa by the foreign investor or authorized representative
- (g) Latest audit report and tax clearance certificate of the local company



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