

FOREIGN DIRECT INVESTMENT NEPAL INVESTMENT GUIDE

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Abbreviation

WTO = World Trade Organization

BIMSTEC = Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation

SAARC = South Asian Association for Regional Cooperation

NICCI = Nepal-India Chamber of Commerce & Industry

FDI = Foreign Direct Investment

FITTA = Foreign Investment and Transfer of Technology Act

FY = Fiscal Year

JVA = Joint Venture Agreement

DOI = Department of Industry

BFI = Banks and Financial Institutions

BITs = Bilateral Investment Treaties

NPR = Nepalese Rupees

PPPIA = Public Private Partnership and Investment Act

IBN = Investment Board of Nepal

NRB = Nepal Rastra Bank

BPO = Business Process Outsourcing

KPO = Knowledge Process Outsourcing

USD = United States Dollar

OCR = Office of Company Registrar

IRD = Inland Revenue Department

ITA = Income Tax Act

PAN = Permanent Account Number

DTAA = Double Taxation Avoidance Agreement

VAT = Value Added Tax

TDS = Tax Deducted at Source

UNCITRAL = United Nations Commission on International Trade Law

ICC = International Chamber of Commerce

LCIA = London Court of International Arbitration

CIETAC = China International Economic and Trade Arbitration Commission

HKIAC = Hong Kong International Arbitration Centre

SIAC = Singapore International Arbitration Center

Introduction

Nepal is a landlocked country that lies between India and China. Over the past several years, it has emerged as a center for economic growth and development due to its strategic location. This makes Nepal an excellent location for new business endeavours. Furthermore, this country has legislative investment protection in effect, ensuring that every investment is protected. Investors can also exercise rights that safeguard their investments and properties from being nationalised. They also have the right to a hundred percent repatriation of any gains made from their investments, which helps make Nepal an attractive platform for financial transactions (NICCI, 2024).

Since Nepal has opened up a wide range of its sectors to foreign investment, the country has emerged as a vibrant and enticing destination for such investment. The bulk of Nepal's economic sectors are open to 100 percent foreign ownership, while some industries have limits on the amount of international investment allowed. Foreign investment in Nepal is welcome in a wide range of economic disciplines and industry sizes; the Nepalese government has declared its willingness to accept money in both small and large businesses. Because of Nepal's ideal location, numerous businesses, including energy and tourism, have been able to take advantage of possible investment possibilities in their respective environment. The government has also contributed to this by upgrading the status of foreign investment to a major priority.

Nepal is considered as a liberal trade promotion country and a desirable investment destination in terms of investment possibilities, conditions, incentives, and infrastructure. In other words, Nepal's trade and investment opportunities are secure and profitable due to an investment-friendly environment, flexible rules and regulations that are consistent with the spirit of globalisation and liberalisation, affordable labour, harmonious understanding among the government, employers, and trade unions, and free access to the vast Indian market for joint venture products (Ministry of Foreign Affairs).

Nepal is geographically located between two of the world's rising major economies: India and China. Given the immense potential of these new markets, conducting business in Nepal is quite appealing. In addition, Nepal has offered to serve as a transit nation between them. Nepal is a member of the World Trade Organisation (WTO), the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC), and the South Asian Association for Regional

Cooperation (SAARC), which oversees the implementation of the South Asian Free Trade Agreement. This will create new opportunities for investors in Nepal.

2. FDI Legality in Nepal

2.1. Negative and Positive Lists

FDI in Nepal is only permitted in industrial activities, not in trade-related activities. There are two factors used to determine the legality of FDI in Nepal: -

I. Negative Lists:

The proposed business activity must not be prohibited for FDI by FITTA, often known as the Negative List (Department of Industry, 2024). Foreign investors are not authorised to engage in the following sectors in Nepal:

	Industries in the Negative List
1.	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.
2.	Small and cottage industry
3.	Personal service business (such as hair salon, tailoring, driving, etc.)
4.	Industry manufacturing arms and ammunitions, bullets, and shell, gunpowder, explosive materials, nuclear, biological, and chemical (N.B.C.) weapons, atomic energy, radio-active materials
5.	Real estate business (other than construction industries), Retail Business (excluding international chain retail business with its business in at least two countries), internal courier service, local catering service, moneychanger, remittance service
6.	Travel agency, guide, trekking, and mountaineering guide involved in tourism, and rural tourism including homestay
7.	Mass communication media (newspaper, radio, television, and online news), and motion picture of national language.

8.	Management, account, engineering, legal consultancy service and language training, music training, computer training.
9.	Consultancy service having foreign investment of more than 51%.
10.	Ride sharing business having more than 70% foreign investment

II. Positive Lists

Once the Negative List test is cleared, the prospective business must be classified as an industry under the IEA, also known as the Positive List. The IEA has classified 8 different types of industries and their related sub-categories.

:

	Industry Classification	Industry Sub-classification
1.	Energy-based Industry	<ul style="list-style-type: none"> ✓ Industries generating energy from hydropower, wind, solar, coal, natural oil and fuel, gas, biomass, or other sources ✓ Electricity transmission line ✓ Electricity distribution line ✓ Feasibility study of energy
2.	Agriculture and Forest Industry	<ul style="list-style-type: none"> ✓ Fruit farming or processing ✓ Production of milk and dairy products ✓ Furniture industry ✓ Cold storage ✓ Paper production
3.	Infrastructure Industry	<ul style="list-style-type: none"> ✓ Road, bridge, tunnel ✓ Ropeway, railway, tram, trolley bus, monorail ✓ Airport, cargo complex ✓ Business complex ✓ Irrigation infrastructure
4.	Tourism Industry	<ul style="list-style-type: none"> ✓ Motel, hotel, resort, bar, and restaurants

		<ul style="list-style-type: none"> ✓ Travel agency, tour operator, healing center, casino, spa ✓ Adventurous tourism: trekking, skiing, paragliding, canoeing, mountaineering, rafting, hot air ballooning ✓ Construction and operation of cable car ✓ Cruise, water entertainment and boating
5.	Information, Communication and Technology Industry	<ul style="list-style-type: none"> ✓ Internet Service Provider ✓ Software development ✓ Data center, data mining, cloud computing ✓ Broadband infrastructure, telecom tower, optical network, satellite network ✓ Business process outsourcing, knowledge process outsourcing
6.	Service-oriented Industry	<ul style="list-style-type: none"> ✓ Investment companies ✓ E-commerce ✓ Business incubation service ✓ Construction business ✓ Hospitals, nursing homes, clinic, polyclinic, physiotherapy clinic
7.	Manufacturing Industry	<ul style="list-style-type: none"> ✓ Industries manufacturing products by using or processing raw materials such as cement industry, plastic industry
8.	Mines and Minerals Industry	<ul style="list-style-type: none"> ✓ Industries producing petroleum products, natural gas and fuel

Important Note: FDI in BFIs and insurance companies do not fall under the afore-mentioned regime and are respectively governed by the laws of central bank and the Nepal Insurance Authority.

2.2. Investment Threshold

A foreign investor is required to invest NPR 20 million in the proposed business. If foreign investment is made in Information Technology business through Automatic Route, then the minimum threshold will not apply.

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 – (i) transferring patent, design, trademark, goodwill, user's license, formulas and processes; (ii) franchising; (iii) sharing technical know-how; (iv) providing technical advisory, management and market service. (v) reverse engineering
Loan Investment	Foreign financial institutions can provide loan to a foreign investment company in Nepal upon – (i) concluding project loan agreement or project finance agreement, and (ii) obtaining regulatory approvals
Branch Industry	Establishment or expansion of branch industry in Nepal by a foreign industry.

2.4. Approving Authorities

Nepal's FDI system includes both permission-based and automated approval mechanisms. FDI via the Automatic Route is detailed in 2.5. Currently, every foreign investor must acquire FDI approval from regulatory authorities before investing in Nepal. According to the FITTA amendment made by the Ordinance for Amending Some Acts of Nepal for Investment Facilitation dated 28 April 2024 (the "Ordinance"), the DOI is the exclusive Foreign Investment Approving Body. However, the Public Private Partnership and Investment Act 2019 (the "PPPIA") mandates that the Investment Board Nepal (IBN) approve investment in projects costing NPR 6 billion or more. Similarly, the IBN has the authority to implement and approve investments in hydropower projects with capacities more than 200MW. Hence, despite the Ordinance, the IBN still has the authority to approve certain investments irrespective of the investment being foreign or domestic (Investment Board Nepal, 2021).

To clarify, the DOI approves foreign investment under the FITTA system, while the IBN will approve investment under the PPPIA system.

Investment	Approval from	Notification to
Investment under the FITTA system	DOI	NRB
Investment in projects with cost NPR 6 billion or above under the PPPIA system	IBN	
Investment in hydropower project over 200 MW	IBN	
Investment in hydropower project below 200 MW	DOI	

Prior to the implementation of NRB Bylaws, foreign investors were required to get two FDI approvals:

- Approval from DOI or IBN to invest,
- Approval from NRB to bring in foreign currency in Nepal.

The NRB Bylaws have now removed the necessity for NRB approval in certain instances, allowing foreign investors to invest in Nepal upon obtaining DOI/IBN approval, with no NRB approval essential. This is a conditional waiver, and NRB approval is necessary for investment via share purchase.

NRB approval will not be required in the following instances; instead, notification can be given to the NRB before bringing FDI into Nepal:

- If the shares subscription does not alter shareholding ratio of existing Nepalese shareholders of an established company.
- If foreign investment is made in a company listed in stock exchange.
- Sick industry determined by Industrial Enterprises Act 2020

Forms of FDI		DOI/IBN Approval	NRB Approval
Equity Investment	Incorporation of a new company	Yes	No
	Subscribing shares in an existing company, where shareholding ratio will not change	Yes	No
	Subscribing shares in an existing company, where shareholding ratio will change	Yes	Yes
	Purchasing shares of an existing company	Yes	Yes
Asset Purchase		Yes	No
Lease Financing		Yes	No
Technology Transfer		Yes	No
Loan Investment		No	Yes
Branch Industry		Yes	No

Important Note: NRB should be notified of the investment before bringing in the foreign investment amount even if its approval is not required.

2.5. Automatic Route

Foreign investors will soon be allowed to make foreign investments in Nepal via the Automatic Route, which does not require the approval of the authorising body. The Gazette Notification of 2 October 2023 prescribes (i) upper ceiling of total capital investment and (ii) permissible industrial sectors for making foreign investment through Automatic Route (the “AR Notice”).

The Automatic Route is not operational yet but it will be once the DOI launches online system for it.

I. Applicability of Automatic Route for permissible types of Foreign Investment

Foreign investment through automatic route is allowed for industries having total capital investment up to NPR Fifty Crores (i.e., NPR 50,00,00,000). This is applicable for foreign investment done through the following two ways:

- Incorporation of a new company as 100% subsidiary or as a joint venture, and
- Capital increment in an existing company with foreign investment.

II. Industries where FDI can be made through Automatic Route

	Industry Classification	Industry Sub-classification
1.	Energy-based Industry	<ul style="list-style-type: none"> ✓ The industry manufacturing machines, and equipment used to generate energy from air, solar power, biomass or other sources. ✓ Energy based on Biogas ✓ Energy Produced as a by-product of the Sugar Industry ✓ Study of Potential of Energy

2.	Industries based on Agriculture and Forest Products	<ul style="list-style-type: none"> ✓ Fruits and Vegetables Processing ✓ Establishment and Operation of Green-Houses ✓ Silk Processing ✓ Tea and Coffee Processing ✓ Herb Processing
3.	Infrastructure Industries	<ul style="list-style-type: none"> ✓ Vehicle Parking ✓ Export Based Goods Processing Zone ✓ Polluted Water Purification Industries (Wastewater Treatment Plant) ✓ Building Film City/ Building Film Studio ✓ Construction and Operation of Warehouses
4.	Tourism Industries	<ul style="list-style-type: none"> ✓ Motel, Hotel, Resort, Bar and Restaurant ✓ Fun Park, Water Park ✓ Conference and Sports Tourism
5.	Information Technology Industries	<ul style="list-style-type: none"> ✓ Technology Park ✓ I.T. Park ✓ Biotech Park ✓ Software Development ✓ Data Processing ✓ Digital Mapping ✓ Business Process Outsourcing (B.P.O), Knowledge Process Outsourcing (K.P.O) ✓ Data Center, Data Mining, Cloud Computing ✓ Web Portal, Web Design Service
6.	Service-oriented Industries	<ul style="list-style-type: none"> ✓ Mechanical Workshop ✓ Construction Business ✓ Hospital ✓ Nursing homes, Clinics, Polyclinics, Rehabilitation homes, Physiotherapy Clinics, Ayurvedic and other alternative Hospitals ✓ Sports Services, Swimming pools

7.	Manufacturing Industries	<ul style="list-style-type: none"> ✓ Livestock and fishery feed production ✓ Processing and Packaging of Livestock and Fishery Meat ✓ Production of oil fat from basic raw materials ✓ Production of Starch, Glucose, etc. ✓ Bakery Goods Production ✓ Confectionery and Biscuit Production ✓ Beverage Production (Non-Alcoholic)
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2.6. Investment Timeline

FITTA Regulation has set the investment timeline on two bases:

- DOI/IBN approval,
- Commercial operation date of the business.

I. 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%

II. Regardless of the above, the FITTA Regulation requires investors to contribute 70% of the total FDI amount before the investee company's commercial operation date⁸, and the remaining 30% within two years afterward. In terms of foreign investment through the

purchase of existing company shares, the entire investment must be brought into Nepal within one year after approval.

III.

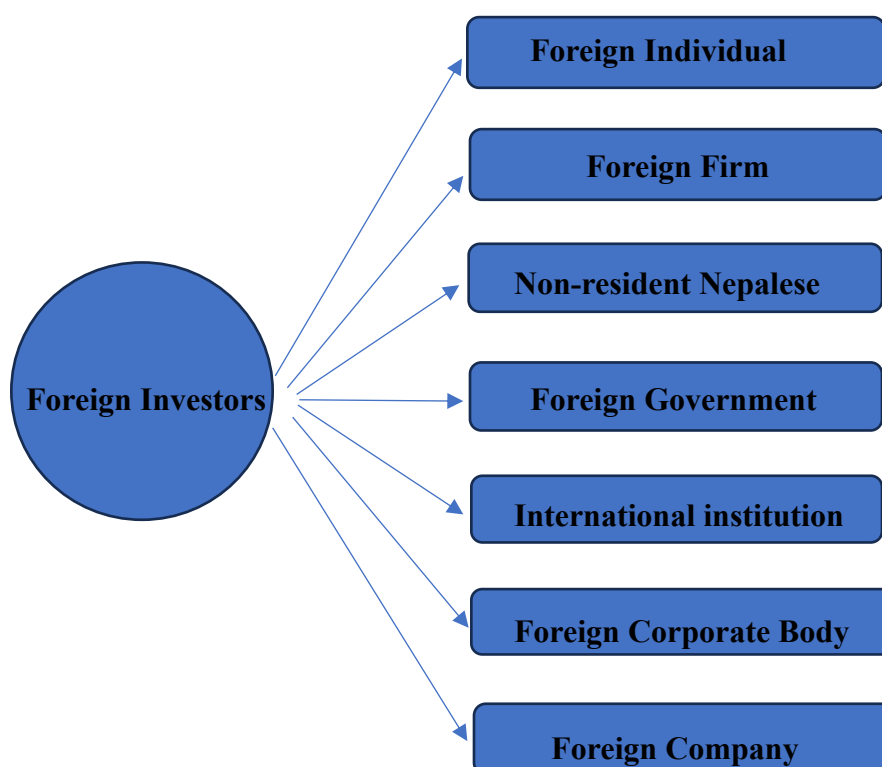
2.7. Sector Specific Investment Cap of FDI Amount

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% of paid-up capital
Consultancy Business	51%
Ride Sharing Business	70%
Payment Service Providers/ Payment Service Operators	15% of paid-up capital

2.8. Foreign Investor

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



3. Commencement of Foreign Investment

3.1. Setting up a Foreign Investment Company:

	Stepwise Process	Regulatory Authority	Tentative Timeline
1.	FDI approval, or	DOI or IBN	20 days
	FDI through Automatic Route	DOI	1 days
2.	Company registration	OCR	7 days
3.	Tax registration	IRD	1 days
4.	Investment in hydropower project below 200 MW	Concerned ward office	1 days
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 days
8.	Certification of Shareholders Register	OCR	10 days
9.	Recording of FDI amount after investment	NRB	15 days

3.2. Foreign Investment in an Existing Company via Share Subscription or Share Purchase:

	Stepwise Process	Regulatory Authority	Tentative Timeline
1.	FDI approval, or	DOI or IBN	20 days
2.	NRB Approval (for share purchase and shares subscription that changes existing shareholding ratio)	NRB	7 days
3.	Prior notification for bringing in FDI amount (for shares subscription that does not change existing shareholding ratio; FDI in a listed company; and FDI in Sick Industry)	NRB	1 days
4.	Recording of Completion of shares purchase or shares subscription	OCR	1 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.

4. Taxation

4.1. Tax System of Nepal:

A major source of revenue for the Government of Nepal is Taxes. Taxes are levied on all sources of income, whether received or accrued. Taxes in Nepal are classified in two types; Direct and Indirect Taxes. Direct Taxes are those paid directly by individuals or entity to government and include Income Tax, Local Tax, Wealth Tax and so on. Indirect Taxes are not paid directly by the consumer, but rather levied on goods and services. These include VAT, Custom Duty, Excise Duty and so on. As per the **Income Tax Act of Nepal, (ITA)**, taxes are levied on income from employment, businesses, investments and windfall gains.

All individuals or entities with taxable income are required to register themselves with the Inland Revenue Department, obtain a Permanent Account Number (PAN) and file an Income Tax Return annually. The parties are required to follow a uniform income year, that corresponds to the Nepalese Fiscal Year. All tax payers must submit their tax return within three months from the year end. If there is any inconsistency in the income tax return submitted, the return can be amended within 30 days from the date of filing.

4.2. Corporate Income Tax:

In Nepal, the standard corporate tax rate is **25%** for businesses and corporations. However, there are other corporate tax rates that is applicable for various other industries.

A tax rate of **20%**, also known as Concessional Corporate Tax is applicable when:

- Income is earned from operations or manufacturing activities, excluding the production of tobacco and alcohol.
- Income is earned from projects conducted to build public infrastructure or in the power generation, transmission and distribution sector.
- Income earned from agriculture, forestry and mining industries.

A tax rate of 30%, also known as High-Rate Corporate Tax is applicable when:

- Income is earned from Banks and Financial Institutions
- Income is earned from manufacturing Alcohol, Tobacco, Cigar etc.
- Income is earned by companies engaged in petroleum business.
- Income is earned from Telecom and Internet Services.
- Income is earned by companies engaged in money transfers, capital market business, securities business, merchant banking etc.

4.3. Income Tax:

The Income Tax Rates as published by the IRD, for the fiscal year 2080/81 are as follows:

Individuals	Couples	Tax Rates
Up to NPR 500,000	Up to 600,000 for couples	1%
NPR 500,000 to NPR 700,000	NPR 600,000 to NPR 800,000	10%
NPR 700,000 to NPR 1,000,000	NPR 800,000 to NPR 1,100,000	20%
NPR 1,000,000 to NPR 2,000,000	NPR 1,100,000 to NPR 2,000,000	30%
NPR 2,000,000 to NPR 5,000,000	NPR 2,000,000 to NPR 5,000,000	36%
over NPR 5,000,000	over NPR 5,000,000	39%

4.4. Non-Resident Income Tax:

Non-Residents are taxed at a rate of 25% on the remuneration earned from Nepal, regardless of the type of income (except for specific exemptions).

Income derived from transporting passengers, mail, or cargo by sea or air that is embarked in Nepal and is considered an online service is taxed at 5%. This is because such services directly involve activities originating from Nepal's territory.

Income generated from offline services, that do not originate in Nepal, are taxed at 2%. This lower rate encourages international business activities that do not directly start from Nepal but are conducted with or for Nepali entities or individuals.

4.5. Withholding Taxes:

Under Chapter 17 (Sections 87 to 93) of the ITA, the taxpayer is required to withhold taxes or deduct TDS, on certain specified payments at the prescribed rate. If the taxpayer fails to withhold taxes, it will be subjected to penalties, including interest.

Depending on the nature of income, Foreign Investors are required to pay TDS at certain rates. 5% TDS is levied for Dividend Income, 15% TDS is levied for Royalty Copyright, Patent and Trademark, Service Management and Interest.

4.6. Capital Gain Taxes:

A 25% tax is levied in form of Capital Gain Tax when shares owned by a foreign investor in a Nepalese entity is sold, irrespective to whether a foreigner or local person. In primary transaction, the Nepalese entity has a liability to withhold and pay the capital gain tax on behalf of the foreign investor. However, in the secondary transaction, there is no such liability.

4.7. Double Taxation Avoidance Agreement (DTAA):

Nepal has concluded tax treaties, known as the Double Taxation Avoidance Agreements (DTAAs) with 11 countries. They are Austria, Bangladesh, China, India, Korea, Mauritius, Norway, Pakistan, Qatar, Sri Lanka and Thailand. As long as Nepal has the DTAA with these countries, the ITA provides relief against double taxation. The purposes of this agreement is to avoid international double taxation on the same income by granting foreign tax credits and also to prevent tax avoidance.

The DTAA specifies the applicable tax rates for various income heads in Nepal.

Income Heads	Applicable Rate	Applicable Jurisdiction
Profits of Enterprise	25%	Country of incorporation or where the permanent establishment is located.

Dividends	5%: if the beneficial owner is a company holding at least 25% of the shares 10%: if the beneficial owner is a company holding at least 10% of shares	Both the Jurisdictions
Interest	Ranges from 10% to 15%	Both the Jurisdictions
Royalties	15%	Both the Jurisdictions
Capital Gains	25%	Country where the company whose shares are being transferred is a resident.

4.8. Value Added Tax:

Value Added Tax (VAT) is an indirect tax in Nepal, governed by the Value Added Tax Act, 1996 and Regulation, 1997. This tax is imposed on various levels of value addition in the production and distribution process of goods and services. VAT is applicable to Supply of goods or services within Nepal, Import of goods and services inside Nepal and Export of goods and services outside Nepal. In Nepal, the standard rate of VAT is 13%, except for those items specified in Schedule 1 and 2 of the Act (Investment Board Nepal, 2021).

Any business registered for VAT must pay VAT when buying goods or services from suppliers and must charge VAT when selling the goods or services to its customers. If the collected VAT is more than what has been paid, the difference amount is paid to the Government. If the paid VAT is more than what has been collected, the business can claim a VAT refund from the Government. To prevent double taxation, a credit is given for VAT paid on goods and services used for the purpose of making any taxable supply. The tax credit system ensures that businesses are taxed only when they add value to the goods or services, not on the entire value of the goods or services at each stage of production or distribution.

4.9. Import Duties:

Custom Duty:

It is calculated at the Nepal border while importing goods and is based on Cost, Insurance and Freight; altogether known as the transaction value. Finance Act of Nepal revises the rate of Custom Duty each year. Custom Duty can range from 1% to 80%, based on the transaction value.

Excise Duty:

Governed and Regulated by the Excise Act 2002 and the Excise Regulation 2003, Excise Duty is payable on local manufacture of movable goods and import of applicable goods. One must obtain a license to manufacture, import, sell or store excisable goods or deliver a related service. Every registered person must file an excise duty return by the 25th day of the following month, even for the month where transactions have not occurred.

Local Taxes:

These taxes are governed by the municipalities. The central government has divided the area of tax collection into municipalities and rural municipalities. However, the Central Government is responsible for the collection of Income Taxes. Each municipality and rural municipalities set their own percentage of local taxes, which includes business taxes, rental taxes, local business registration fees and the procedures for collection of the same.

5. Protection of Investments and Investors:

5.1. Bilateral Investment Treaties

Bilateral Investment Treaties (BITs) are international agreements that establish the terms and conditions for private investment by nationals and companies of one country to another country. Nepal has entered BIT with four countries as of now. They are France (in 1985), Germany (in 1988), the United Kingdom (in 1993) and Finland (in 2011). Nepal has also entered BIT with Mauritius (signed in 1999) and India (signed in 2011), which are yet to be acted upon.

BITs include protection for Investments and Investors as follows:

1. National Treatment: Foreign investors are entitled to be treated equal to local investors or investors of any other third state.
2. Fair and equitable Treatment: BITs protect against unfair legal or administrative processes, discrimination, and abusive treatment. It also protects against the government taking over the investor's property without proper compensation.
3. Compensation for Losses: Investors must be compensated for losses on investment caused by war, riots, national emergencies, or armed conflicts.
4. Subrogation: When a government pays an investor for their losses due to non-commercial risks (like political instability), that government can claim compensation from the other contracting party (other government) involved.
5. Repatriation of Investment and Returns: Investors can move their capital and profits, such as dividends and interest, proceeds from the sale of shares back to their home country.
6. Dispute Settlement Mechanisms of Investors: BITs provide ways to resolve disputes between the state and investors, and between different states. It allows foreign company personnel to enter and work in the host country.

5.2. Protection to Investors under FITTA 2019:

There are various benefits and provisions outlined for the Protection of Investors

1. VISA Benefit:
 - Foreigners are granted a non-tourist visa for up to 6 months if they are visiting Nepal for study, research, or surveys related to foreign investment.
 - Foreign Investors and their families can get business visas.
 - Two representatives of large foreign investments, with minimum 25% of total investment amounting to USD 1 million or more, and their families can get business visas.
 - Foreign experts and managerial employees working in a foreign investment company can get non-tourist visas and work permits.

2. Change in Law protection: Foreign Investors are guaranteed with Change in Law Protection, where the laws governing their investments, as when the investments were approved, will remain unchanged unless agreed upon. Any changes must not harm their rights and investments.
3. Protection against Nationalization: Foreign Investors are protected against nationalization of companies they have invested in. Foreign investments are protected from being taken over by the government, except for public purposes.
4. Repatriation of Investment and Returns: Investors can transfer their profits and capital back to their home country in convertible foreign currency.
5. Land: Authorities such as Department of Industries (DOI) or Investment Board Nepal (IBN) will help foreign investors acquire land needed for operating their business smoothly if they cannot do so on their own.
6. Authorization: As set clear by FITTA 2019, Foreign investors can authorize someone to act on their behalf in Nepal.
7. National Treatment: Foreign investments will be treated the same as local investments, till the time such investments remain in Nepal. Exceptions include:
 - Intellectual property under international agreements.
 - Benefits for local industries.
 - Government subsidies.
 - Non-commercial services provided by the government.
 - Financial services for foreign investors.
 - Special treatment under regional or international agreements.
 - Regulatory authority conditions for loans, payments, and services outside Nepal.
 - Protection of public health, plants and animals, and environment.

6. Repatriation of Investment and Returns:

6.1. Right of Repatriation:

Upon obtaining approval and payment of applicable taxes, Foreign Investors are given the right to Repatriate their Investment and Returns. The Repatriation includes:

1. Profit or Dividend
2. Returns of Capital at the Time of Liquidation
3. Compensation or Indemnity
4. Scale Proceeds upon Share Transfer
5. Lease Rent under Lease Financing

6.2. Regulatory Approvals:

Any foreign Investor must take approval from authorities like Department of Industries (DOI), Investment Board Nepal (IBN) and Nepal Rastra Bank (NRB) to repatriate their investment and returns.

Approvals	DOI	IBN	NRB
For approved foreign investment under FITTA	Required	Not Required	Required
For approved investment under PPPIA	Not Required	Required	Required

After obtaining these regulatory approvals, the investors can repatriate the amount at the prevailing exchange either in the same foreign currency which the foreign investor had brought in, or in a different foreign currency as approved by the NRB.

NRB sets out a condition at the time of granting approval of repatriation that Foreign Investors are not allowed to repatriate their investment amount during the first year of their investment.

6.3. Payment of Taxes:

Foreign investors are permitted to repatriate their investment amount after payment of certain amount as applicable taxes:

Income Head	Applicable Tax Rate
Return of Capital	N/A

Dividends	5%
Share Sale Proceeds	5%
Aircraft Lease	10%
Royalties	15%
Service Fees	15%

6.4. Ceiling on Royalty Repatriation:

FITTA regulation has prescribed Ceiling on Royalty Repatriation for two kinds of categories.

I. Ceiling of royalty amount for all types of technology transfer (except Trademarks)

Royalty	For Local Sales	For Export Sales
Total amount or total sales amount	Up to 5% of total sales excluding VAT	Up to 10% of total sales excluding VAT
If the royalty is based on net profits	Up to 15% of net profits	Up to 20% of net profits

II. Ceiling of royalty amount for use of Trademarks

Industry	For Local Sales	For Export Sales
Alcohol and Tobacco Industry	Up to 2% of total sales excluding VAT	Up to 5% of total sales excluding VAT
Other Industries	Up to 3% of total sales excluding VAT	Up to 6% of total sales excluding VAT

7. Dispute Settlement Mechanism

7.1. Dispute Settlement via Arbitration:

The Foreign Investment and Technology Transfer Act (FITTA) allows the parties to designate the governing law and dispute resolution mechanism for foreign investment agreements. This applies to various types of agreements, such as loan, share purchases, franchises, joint ventures, and technology transfer agreements. The laws of England and Wales are often opted as governing law due to their established legal system and global commerce reliability. Dispute resolution is often done through arbitration under United Nations Commission on International Trade Law (UNCITRAL), International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), China International Economic and Trade Arbitration Commission (CIETAC), and Hong Kong International Arbitration Centre (HKIAC) rules. Singapore is increasingly opting for arbitration under Singapore International Arbitration Center (SIAC) rules due to its robust legal infrastructure, efficient arbitration framework, and enforceability of arbitral awards under the New York Convention.

7.2. Dispute Settlement Provision

When Investment Agreement or transaction documents are silent on dispute settlement mechanism, FITTA provides for the following default statutory provisions.

Rules/ Laws	Provisions
Governing Laws	Laws of Nepal
Seat of Arbitration	Kathmandu, Nepal
Arbitration Rules	UNCITRAL Rules of Arbitration
Substantive Law	Laws of Nepal

Before starting an arbitration, one must first try for an amicable settlement through the Department of Industries (DOI). This process must be completed within 45 days.

7.3. Enforcement of Domestic Arbitral Award

The parties have 45 days to enforce the arbitral award from the date of receipt. If the concerned party fails to enforce the arbitral award, the other party can file an appeal for

enforcement at the concerned District Court. This application must be filed within 30 days from the date of expiry of the initial 45 days period.

The arbitral award can be challenged in front of the high court within 35 days from the date of receiving the award. The grounds for challenging the Arbitral award are:

1. If any of the parties lack the legal capacity to enter into the dispute settlement agreement.
2. When the governing laws of the settlement are not clearly specified in the agreement.
3. When the arbitrator is not fully aware of the issues for making such an award.
4. If the arbitrator exceeds the powers granted to them under the arbitration agreement or under the Arbitration Act.

In the circumstances provided, the High Court has the authority to either disregard the award or pass an order for re-arbitration. The order of the High Court can be further challenged in the Supreme Court if the decision violates the rights of any party.

7.4. Recognition and Enforcement of Foreign Arbitral Award

A foreign arbitral award is recognized and enforced if it is issued by a country under the New York Convention and applies to commercial disputes in Nepal. As Nepal is a signatory to the Convention, it correspondingly recognizes and enforces arbitral awards from other member states, promoting international arbitration agreements' enforcement.

For its enforcement and recognition in Nepal, the foreign award should satisfy the following conditions:

1. Arbitrator appointments and awards should be made in accordance with agreement laws and procedure.
2. Awards must be made for commercial disputes in Nepal.
3. Parties are notified about arbitration proceedings.
4. Award rendered on matters are strictly entrusted to the arbitrator.
5. Award becomes final and binding according to arbitration country's laws.
6. Application for enforcement of arbitral award is filed within 90 days from award date.

An application must be submitted to the High Court within 90 days from the date of award for the enforcement. If the above conditions are met, the High Court forwards the award to the concerned district court for enforcement.

The foreign arbitral award is non-enforceable if it is against the public policy of Nepal.

7.5. Recognition and Enforcement of Foreign Judgments in Nepal

Enforcement of Foreign Judgement in Nepal is governed by Mutual Legal Assistance Act, 2070 (2014); which is considered as the principal legislation. It specifies that a bilateral treaty must be in effect before such enforcement may take place. Nepal has not yet signed such a treaty that would allow foreign judgment to be enforced.

8. Visa Recommendations

Foreign visitors other than Indian nationals need valid passports to enter Nepal (Department of Industry, 2021). Indian nationals need valid passports/travel document if the entry point is airport. There is a provision of seven categories of visa in the Immigration Act 2049 and Immigration Regulation 2051. These are:

I. Non-Tourist Visa

Non-tourist Visa for Carrying out the Feasibility Study:

Foreign Visitors, wishing to undertake research and study with a purpose of investing in Nepal, may be granted a non-tourist visa by the Department of Immigration for a maximum period of 6 months on recommendation of the DOI.

For obtaining this visa, the prospective investor should apply to DOI in the prescribed format along with the following documents:

- i. Bio-Data of the applicant
- ii. Photo copy of the passport with the last visa
- iii. Brief description of the project in which research and study will be undertaken.

- iv. Photocopy of the citizenship certificate of the Nepalese investor, if the proposed industry is going to be established as a joint venture.

For obtaining this visa, the prospective investor should apply to DOI in the prescribed format along with the following documents:

- i. Passport size photograph, 6 nos
- ii. Recommendation letter from DOI
- iii. Bio-Data of the applicant
- iv. Photo copy of the passport with the last visa.

II. Non-tourist visa for Expatriates

If required skilled manpower is not available locally, industry can employ foreign nationals by obtaining work permit. Such expatriate personnel working in the industries will be granted a non-tourist visa for duration of one year at a time on recommendation of DOI and Department of Labour. The work permit for such persons can be provided for up to a period of 5 years on annual renewal basis

For obtaining this visa, the prospective investor should apply to DOI in the prescribed format along with the following documents:

- i. Copy of the Agreement between the industry and expatriate
- ii. Progress report of the industry
- iii. Bio-Data of the expatriate personnel (mainly describing the experience in the related industry) and academic certificates
- iv. Photo copy of the passport with last visa
- v. Name list of Nepalese workers who will be trained from the expatriate
- vi. Industry registration certificate
- vii. Copy of vacancy announcement advertised in national daily

III. Business Visa

Foreign investors and/or his/her authorised representative and their dependents will be granted a business visa for up to a period of five years at a time on recommendation of DOI. The criteria of visa-period recommendation will be as set by the DOI. Various parameters such as investment level, financial performance, employment generation, income tax paid, area of investment etc. will be analysed prior to recommending the visa.

For obtaining this visa, the prospective investor should apply to DOI in the prescribed format along with the following documents:

- i. Photo copy of the passport with last visa
- ii. Proof showing investment made in the company.
- iii. Industry registration certificate
- iv. Progress report of the industry including the current status
- v. Certificate of relationship with the dependents.
- vi. In case of an authorized representative, a letter authorizing representation for the foreign investor and the photocopy of passport.
- vii. Contact address and telephone number of the investor

IV. Residential Visa

Foreign investor making an investment equivalent to more than US \$ one hundred thousand, at one time and in convertible foreign currency, will be granted a residential visa on recommendation of DOI. This visa can be granted for one year at a time.

Once the recommendation letter is obtained from DOI, the investor or the authorized representative may apply to the Department of Immigration in the prescribed format along with the following documents:

- i. Passport size photograph, 6 nos
- ii. Recommendation letter from DOI
- iii. Certificate of Incorporation
- iv. Copy of the temporary/permanent account number (PAN)

- v. Copy of the share certificate (in case of equity investment)
- vi. Copy of the passport with last visa
- vii. Industry registration certificate
- viii. Bio-Data of the passport holder

However, for the visa extension the following documents are to be submitted to the Department of Immigration:

- i. Passport size photograph, 3 nos
- ii. Recommendation letter from DOI
- iii. Copy of the tax clearance certificate
- iv. Copy of the passport with last visa
- v. Bio-Data of the passport holder

9. Legal Framework for E-Business

Any E-Commerce business must follow the enlisted Civil and Commercial Regulations:

1. Income Tax Act, 2002
2. Companies Act, 2006
3. Money Laundering and Prevention Act, 2008
4. Foreign Investment and Technology Transfer Act, 2019
5. Industrial Enterprises Act, 2020

E-commerce companies should not be engaged in manufacturing or production activities unless they obtain prior approval from the Department of Industry and Commerce for the same (PKF International Limited). An E-Commerce company can be registered with the Department of Industry or the Department of Commerce if the following conditions are met:

9.1. Department of Commerce:

1. The nature of the business is trading.
2. The company imports and exports goods and has direct sales.

3. The business is operated by promoting trade through E-Commerce platforms.

9.2. Department of Industry:

1. It is mentioned in the company's Memorandum of Association.
2. The company is involved in imports and exports.
3. The company sells customized goods and is involved in packaging.

FAQ

1. Which areas are not opened for foreign investment?

- Most of the industries are open for foreign investment. Only a few industries mentioned in Negative list in **section 2.1**.

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. 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 for more details on ownership percentage in these sectors.

4. 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 minimum amount of half a million USD regardless of their ownership percentage in the company they are investing in.

5. 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.

6. Is there a preferred jurisdiction to invest in Nepal?

- In terms of availing investment protections and avoidance of double tax conferred by BITs and DTAAAs 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 DTAAAs with India, Bangladesh, Thailand, Sri Lanka, Mauritius, Austria, Pakistan, China, South Korea, Norway, and Qatar.

7. Is there a provision of automatic route in Nepal?

- Automatic route has been provisioned by the central bank in their bylaws, by the DOI under the FITTA and its regulations. Under the automatic route of central bank, 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 for shares subscription that changes existing shareholding ratio will require central bank approval.

Likewise, under the automatic route of DOI, prior approval of DOI will not be necessary for foreign investment. The DOI has launched the Automatic route in Nepal.

8. Are regulatory approvals required for repatriating investment amount?

- Yes, approvals from DOI/IBN and NRB are required to repatriate the investment amount. For investments approved by the DOI, repatriation approval from DOI and NRB are required, whereas for investment by the IBN, IBN and NRB approval for repatriation will be required.

9. 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.

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

- As per the amendment of FITTA made by ordinance for amending some acts of Nepal for investment facilitate dated 2024 (the “ordinance”), the DOI is the sole foreign investment approving body. However, according to the PPPIA, the IBN has been mandated to approve investment for those projects whose cost is NPR 6 billion or above. Similarly, the IBN also has the authority to implement and approve investment of hydropower projects having more than 200 MW capacity. For clarity, the DOI will approve foreign investment under the FITTA regime, while the IBN will approve investment under the PPPIA regime.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 - (i) the covenants specified in the FDI approval, and (ii) the applicable laws relating to operation of the company.

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

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

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

- The regulatory authorities may extend the timeline on reasonable grounds.

18. 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.

19. 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 to be obtained for investing in the same company in future.

20. 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.

21. 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.

22. 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:
 - 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.
 - 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.

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Thank You!

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