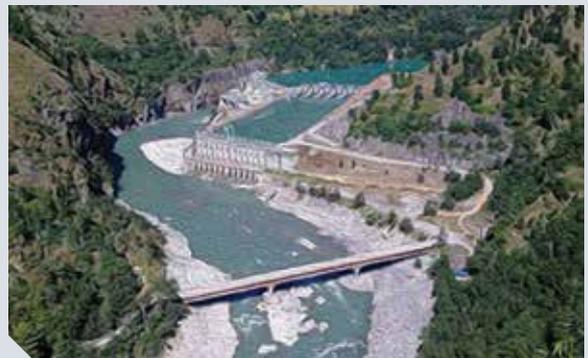
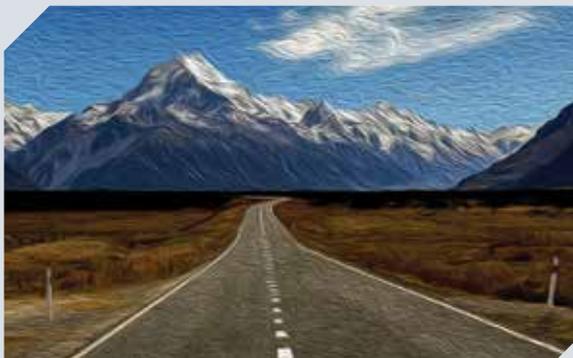


A Handbook for
Indian Investors

Investing in Nepal



EMBASSY OF NEPAL
New Delhi, India



NEPAL-INDIA
CHAMBER OF COMMERCE & INDUSTRY
(NICCI)



सत्यमेव जयते
Embassy of India
Kathmandu, Nepal

2024

A Handbook for
Indian Investors

Investing
in Nepal

A Handbook for Indian Investors - 2024

3rd Edition

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Disclaimer:

While we hope the information contained herein found to be useful, it is intended only as a general guide. It may not reflect the very latest developments in government policies, acts and tax laws. It cannot be a substitute for professional advice.

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NEPAL-INDIA
CHAMBER OF COMMERCE & INDUSTRY
(NICCI)

Foreword

While Nepal and India are asymmetrical in terms of size, population, economy, development, and technology, their relationship remains remarkably symmetrical. These two nations share multifaceted commonalities in sectors spanning socio-economic, socio-cultural, linguistic, and even familial realms. Notably, citizens of both countries have been granted the privilege of unrestricted travel between their borders, erasing the need for passports and visas. This unique arrangement has cemented them as “natural partners,” fostering vast potential for collaboration across various sectors.

The late 1980s and 1990s witnessed the establishment of industries in Nepal, both through domestic and foreign investment, marking the foundation of Nepal’s industrial landscape and a marked improvement in its exports. This was notably catalyzed by the historic Trade Treaty of 1996, which signaled the dawn of industrialization in Nepal. Many of these enterprises have not only prospered but have also emerged as significant contributors to Nepal’s national exchequer. This period, referred to as phase one of investments, has been pivotal to Nepal’s industrial growth and cross-border collaboration.



Given the substantial disparity between approved FDI and the actual net FDI inflows observed in Nepal, as elucidated in both this Investment Guide and the accompanying report, we turn our attention to the Survey Report on Foreign Direct Investment (FDI) for the year 2021-22, spanning until mid-July 2022. This report was released in the final week of September 2023. When examining the tangible FDI inflows, encompassing paid-up capital, reserves, and loans collectively referred to as FDI Stock, it is noteworthy that India maintains its preeminent status as the leading source of FDI into Nepal. India’s contributions account for one-third of the total foreign investment in Nepal.

India currently holds the distinction of being Nepal’s “single largest trading partner,” but we advocate for a paradigm shift: India should also be recognized as Nepal’s “single largest export partner.” Nepal offers diverse opportunities in agriculture, energy, tourism, transportation, manufacturing, ICT, healthcare, education, minerals, banking, and more, this paradigm shift becomes more tangible when we consider including energy resources in Nepal’s export basket to India. Nepal’s abundance of perennial snow-fed rivers, flowing from the Himalayas, places it in a unique position with significant hydroelectric potential. By tapping into this potential, Nepal can generate copious scale of clean and renewable energy. Recognizing the global and regional imperatives of environmental sustainability, this approach can actively contribute to mitigating climate change for betterment of our future generation.

To facilitate investments in energy generation and transmission, NICCI has introduced a dedicated chapter outlining the requisite procedures and benefits associated with investments in Nepal’s energy sector. We firmly believe that this edition of the Handbook for Indian Investors, in its third iteration for 2023, holds even greater insights. Thus, we extend an earnest invitation to Indian investors to consider Nepal as their next investment destination.

I wish to extend my sincere appreciation to the Embassy of India, Kathmandu, and the Embassy of Nepal, New Delhi, for their unwavering support in facilitating the release of this handbook. I am also deeply grateful to the Taskforce of the Executive Committee and the dedicated team at NICCI’s Secretariat, as well as to Pioneer Law Associates, for their invaluable contributions, insightful inputs, and diligent efforts that have culminated in the creation of this comprehensive Handbook for Indian Investors in its present form.

Shreejana Rana
President



NEPAL-INDIA
CHAMBER OF COMMERCE & INDUSTRY
(NICCI)

Preface



In 2011, a moment unfolded when Mr. Harsh Kumar Jain, then Counselor (Commerce) of the Embassy of India, Kathmandu (now H.E. Ambassador of India to Ukraine) approached me with a visionary proposal for a virtuous program on bilateral trade and investment, to be jointly organized by the Embassy of India and NICCI. This idea immediately resonated with me due to recurring concerns from potential investors regarding Nepal's business landscape seeking clarity on rules, regulations, trade prospects, establishing production units, registration procedures, sectors of business allowed to Indian investors in Nepal and concerned governing agencies for registration process, etc. I used to assist potential investors very honestly to the extent possible.

I distinctly recall feeling the necessity for such a guidebook, which could assist these prospective investors with comprehensive information, enabling them to plan their investments in Nepal. I was spending a considerable amount of time addressing these queries individually and envisioned that having a guidebook at our disposal would significantly ease the process. With this in mind, I proposed the concept of creating

an investment guide specifically tailored to the needs of potential Indian investors in Nepal. He warmly embraced this proposition, terming it an "excellent proposition," and urged us to commence the process by outlining the book's framework immediately.

Subsequently, I conveyed this development to NICCI's Executive Committee immediately, whose endorsement expedited the guidebook's materialization. This initiative crystallized as "Doing Business in Nepal - A Guide for Indian Investors - 2011," and formally unveiled amidst an interactive session with a delegation from the Confederation of Indian Industry (CII) in Kathmandu on 19th July 2011. The first edition of the Investment Guide underwent a substantial transformation into FAQ format in its second edition in 2018/19. This format, featuring questions and answers, not only enhanced readability but also heightened the guide's effectiveness in conveying vital information. The second edition was launched during the 24th AGM of NICCI on 11th January 2019.

After more than 4 years of the second edition, we take immense pleasure in introducing the third edition, once again in association with the Embassy of India, Kathmandu, this time also supported by the Embassy of Nepal, New Delhi, in the same reader-friendly format with updated information and additional chapters. Despite fluctuating global FDI into Nepal in the sectors like agriculture, manufacturing, tourism, mines and minerals, banking, insurance etc, since we have witnessed gradual trade gap of Nepal with India in the last two decades with 9:1 ratio of import and export in recent years has prompted us to emphasize the export of energy from Nepal to India, with full value addition within Nepal and inviting potential investors from government as well as private entities in India on energy sector in Nepal. So, we have added a dedicated chapter on Hydropower in Nepal with entire procedure and formalities.

Together, the Embassy of India, Kathmandu and NICCI we have worked tirelessly to promote and simplify bilateral and third-country trade and transit via India, bilateral investment, tourism, and related fields. I extend my heartfelt gratitude to the Embassy of India, Kathmandu, for their enduring partnership in various programs and endeavours, from NICCI's inception onward. I also express my gratitude the PR & Publication Committee and Taskforce for the Investment Guide (3rd Edition) for their guidance as well as the Pioneer Law Associates for their valuable contributions.

Keshab Man Singh

Director General, NICCI

Member Secretary, Task Force for Investment Guide for Indian Investors (3rd Edition), NICCI



Message

Deputy Prime Minister and Minister for Foreign Affairs

I am pleased to learn that Nepal-India Chamber of Commerce and Industry (NICCI), in association with the Embassy of Nepal in India and the Embassy of India in Nepal, is publishing “A Handbook for Indian Investors - Investment Guide 2024”. I congratulate NICCI on bringing out this valuable resource with a wealth of vital information. I am sure that the handbook, as the earlier two editions, will be helpful for the potential investors to expand their businesses in Nepal.

Founded on the age-old connections of history, geography, civilization, culture and tradition, Nepal and India enjoy excellent bilateral relations. These relations are comprehensive and multifaceted reinforced by strong people-to-people contacts. India has been a key development partner of Nepal. Nepal-India economic cooperation and development partnership have taken a good momentum in recent years, including in the areas of cross-border connectivity, infrastructure development and power sector. India is the largest trading partner of Nepal. We can see a remarkable increase in the volume of bilateral trade over the years between the two countries.

As Nepal is set to graduate from LDC category by 2026, enhanced level of foreign investment and capacity development remain our priorities. Nepal has been pursuing a liberal foreign investment policy. Abundance of natural resources, large pool of human capital, promising market in the neighbourhood together with sound policy and regulatory framework makes Nepal ideally an attractive destination for investment. The Government of Nepal is committed to continuously improving policy, legal, regulatory and institutional mechanisms to strengthen business and investment environment and opportunities in Nepal.

We are glad to see India making steady progress in socio-economic development and rising as a major economy. As a close neighbour, Nepal would be happy to welcome investment and state-of-the-art technology from India. We encourage Indian investors to take advantage of the readily available investment opportunities in Nepal in our priority areas including hydropower, manufacturing, agriculture, tourism infrastructure, information technology, and hospitality industry, among others.

I am hopeful that this handbook will act as an important resource for connecting aspirations with opportunities and helping further in scaling up meaningful investments in Nepal.



Narayan Kaji Shrestha



Message

Ministry of Industry, Commerce & Supplies



Nepal and India, sharing a distinctive bond, have nurtured robust, profound, and multifaceted connections shaping government-to-government interactions, business-to-business engagements, and people-to-people ties. This relationship has been enriched by an added dimension of economic partnership. India remains Nepal's largest and nearest trading partner and a major destination for its products, raw materials, technology, machinery, and a substantial source of tourism.

India also remains the largest source of investment in Nepal. However, despite long open cross-border connectivity and proximity, the investment from India to Nepal is not at a satisfactory level as ample opportunity is untapped. Over the years, Nepal has presented lucrative investment prospects in sectors such as hydropower, manufacturing, industry, energy production and distribution, tourism, minerals, and information technology. Both nations boost

extensive trade and transit frameworks, alongside a power trade agreement. Factors like affordable labor, favorable foreign investment climate, safeguards against expropriation, and ongoing efforts to enhance trade arrangements contribute to a balanced and sustainable development.

A noteworthy collaborative effort between the Nepal-India Chamber of Commerce and Industry, the Embassy of India, Kathmandu, and the Embassy of Nepal, New Delhi has resulted in the creation of the "Handbook of Indian Investors 2024, 3rd edition". I believe that this handbook stands as a testament to the evolving economic landscape, underscoring the immense potential and investment opportunities between the two nations. Nepal, with its rich natural resources, emerges as an appealing investment destination. Thus this guidebook serves to foster a business-friendly environment, offering valuable insights to Indian investors seeking to invest in Nepal.

I would like to congratulate NICCI, the Embassy of India, Kathmandu, and the Embassy of Nepal, New Delhi, for their valuable joint endeavor. Together, let us aim to fortify and shape the partnership towards a future of prosperity and inclusive growth.

Mr. Damodar Bhandari

Message

H.E. Ambassador of India to Nepal



Embassy of India
Kathmandu, Nepal

I would like to convey my appreciation to NICCI for bringing out this handbook.

India remains Nepal's largest trading partner as well as its largest source of foreign investment. The Government of India is committed to further strengthen our mutually beneficial commercial and economic ties.

During the visit of the Rt. Hon'ble Mr. Pushpa Kamal Dahal 'Prachanda', Prime Minister of Nepal to India in 2023, several decisions were taken such as announcements to construct new Integrated Check Posts (ICP), agreement on the Revised Transit Treaty that provides for access to India's inland waterways for Nepal's transit cargo, start of cross border freight rail operations, building of new motorable bridges at Shirsha and Jhulaghat to connect Nepal's far-west to India and facilitation of digital payments for seamless financial connectivity between Unified Payments Interface, India and National Payment Interface, Nepal. These infrastructure and connectivity initiatives would further expand our economic partnership with Nepal as well as increase Nepal's attractiveness as an investment destination for Indian investors.

In the last few years hydro-power export from Nepal to India has added a new dimension to our economic ties for mutual benefit. In the last year Nepal exported hydro-power worth NPR 15 billion to India. This constituted about 10% of Nepal's total export to India and about 7% of its total global exports. It is expected that the Long Term Agreement on Power Trade that was signed by the two Governments during the visit of Hon'ble External Affairs Minister of India, Dr. S. Jaishankar will further help enhance investments in Nepal's hydropower sector. Similarly the launch of digital payments system/ QR Code based payments will also further boost the number of Indian tourists, who already constituted the largest number of foreign tourists in Nepal.

In this overall context NICCI has been playing an active role in further strengthening our economic ties. I have no doubt that this handbook will be useful for investors keen to do business in Nepal.



Naveen Srivastava

Message

H.E. Ambassador of Nepal to India



EMBASSY OF NEPAL
New Delhi, India



Nepal and India have a long-standing cordial relationship that is supported by similar cultures and socio-economic beliefs. The economies of both countries are intertwined. India remains one of Nepal's primary partners in development, contributing significantly to our trade, tourism, and foreign direct investment. Frequent exchanges of high-level delegations, including prime ministers, have further concretized this unique relationship.

India is the largest Investor in Nepal. The Joint Vision Statement in the power sector that the two prime ministers issued in April 2022 has created a conducive environment to further promote the bilateral relationship in the hydropower development of Nepal and is expected to Increase India's investment in Nepal.

Apart from manufacturing, service, tourism, construction, infrastructure, healthcare, and education sectors for

investments, since Nepal is blessed with abundant water resources with profound scope for hydro-electricity generation, transmission, and power trade has emerged as the safe and long-lasting sector for investment for Indian investors as India is the largest and nearest market with other nearby countries as a potential market through India. Keeping in view the initiative of the Nepal-India Chamber of Commerce Industry (NICCI) which has been a pivotal player in facilitating bilateral relations between Nepal and India in association with the Embassy of India in Kathmandu, for the third edition of the Handbook for Indian Investors for investing in Nepal 2023 with updated formalities to be followed, with elaborated explanations and additional chapters on IPR and Hydropower in Nepal. The Embassy of Nepal in New Delhi is happy to join hands in the initiative with support for the investment guide specially prepared for Indian Investors.

In our pursuit to create an investment-friendly climate, Nepal has taken bold steps by implementing policies, Incentives, and laws that enhance the overall investment landscape. The Foreign Investment and Technology Transfer Act of 2019, in particular, offers appealing opportunities for foreign investors, boasting low investment risks and long-term prospects.

India's comparative advantage in investing in Nepal cannot be overstated. The commonalities we share in terms of food, culture, languages, the presence of revered religious sites, our pegged currency, low transportation costs for trade, and the proximity to the vast Indian market all serve as additional incentives for Indian investors considering Nepal is their investment destination.

Since the book is in FAQ format with potential inquiries of investors in mind, we appreciate the initiative as the book will be a milestone in inviting investors from India. The Embassy of Nepal in New Delhi will play a very supportive role to all those potential Investors of India.

I would also like to appreciate the Nepal-India Chamber of Commerce and Industry and wish for further exemplary Initiatives in the future to promote bilateral economic bonds.

Dr. Shankar Prasad Sharma



Message

The Chief Executive Officer, Investment Board, Nepal

The Investment Board, Nepal, Government of Nepal (IBN), established in 2011 as a high-powered Board to ensure faster progress and implementation of mega projects to develop, implement and facilitate projects in Public-Private Partnership (PPP) and Private Investment by mobilizing domestic or Foreign Direct Investment (FDI), in manufacturing, infrastructure, agriculture, energy, transportation, mines and minerals, ICT, health, tourism and other service sectors in Nepal, IBN has been working in its twelve-year's journey with notable achievements.

During the almost twelve-year period of its establishment, the Investment Board, Nepal has played a significant role in the development of large and transformative infrastructure projects that will make a significant contribution to the socio-economic transformation of Nepal. The IBN facilitates the projects that are above NRs. 6 Billion as a one window mechanism for approving and its effective implementation. The IBN has approved an investment of about USD 9.27 billion for 42 projects, till today.

Out of those projects, 28 projects are in energy and 14 are in the non-energy sector. The IBN has been facilitating the flagship 900 MW Arun 3 hydropower project, undertaken by SAPDC with a USD 1.4 billion investment, has already achieved nearly 66.3% completion in the generation component and 15.46% in the transmission side. The Investment Board, Nepal has recently signed PDA with the SLAPDC for 669 MW Lower Arun hydroelectric Project, planned to be operated in tandem with the 900 MW Arun 3 hydropower Project, during the State Visit of Rt. Hon. Prime Minister of Nepal to India. Progress study is also underway with the 750 MW West Seti and 450 MW SR-6 hydroelectric projects, awarded to NHPC Ltd., which are export-oriented projects aligned with a results-based framework. Additionally, the 900 MW Upper Karnali hydroelectric project has been working for achieving the financial closure. Dabur Nepal, the country's first-generation FDI project has reinvested, for product diversification and capacity enhancement. An Indian company has expressed interest for establishing fertilizer plant in Nepal & IBN has been conducting screening and evaluation of the submitted proposal. These projects increase confidence of investors from India to invest in the investment friendly environment of Nepal.

A significant economic discourse has channeled and shaped Nepal-India relationship in the last few decades. We believe that Nepal provides ample opportunities to invest in Nepal. There lies huge potential between the two neighboring nations in job creation, economic growth and economic diversification & need to expand & strengthen Business to Business & Government to Business initiatives to utilize investment opportunities in Nepal not only in regional market perspectives but also in global market perspective.

The trajectory outlined within its Strategic Plan, the Investment Board, Nepal is dedicated to achieving the designated goals and strategic aims, propelling itself towards an advanced stage of economic growth by establishing IBN as a PPP Center of Excellence and expediting private investments, including foreign direct investment (FDI). As we move forward, we encourage the investors, policy makers and entrepreneurs to capitalize the investment landscape in Nepal. We are hopeful that this initiative serves as a transformative economic journey for both Nepal and India. I eagerly anticipate garnering support and collaboration from all stakeholders and domestic as well as foreign investors to ensure the seamless execution of this Plan's objectives.

I am confident that A Handbook for Indian Investors, 3rd Edition-2024 shall be useful guide for the potential investors and extend my best wishes for the effective implementation of the handbook.




Sushil Bhatta

Message

Secretary General,
Federation of Indian Chamber of Commerce and Industry



India and Nepal share an age-old, unique and warm relationship across cultural, economic, trade and political spheres. The India-Nepal Treaty of Peace and Friendship in 1950 has contributed to the warm ties between the two countries.

India and Nepal share robust economic relations with each other. India is the largest trading partner and investor in Nepal. These economic ties are across the infrastructure sector including airports, irrigation, agriculture, roads, bridges, power projects, industrial estates, communication & telecom, surveys, forestry, building construction etc. Other ties are in social sectors like health, education, human resource development etc.

Our bilateral trade in the year 2022-23 stood at USD 8.8 billion. We can do much more. Joint efforts and cooperation will improve our trade relationship, which has immense potential for growth. In this regard, FICCI has been working jointly with our friends and long-

standing counterpart Chambers of Commerce in Nepal.

I congratulate the Nepal India Chamber of Commerce and Industry (NICCI) for their excellent effort in preparing the 3rd Edition of Invest in Nepal: A Handbook for Indian Investors. The booklet has detailed information related to key emerging opportunities of investment in Nepal, including a new chapter on the formalities and procedure for investment in the field of energy generation and transmission. Energy security being the key focus for our region, India and Nepal can jointly take a lead in this area. Hydel power generated in Nepal will also have the benefit of flood control in Indian plains.

We are confident that this Handbook will be a good reference for Industry, Government, Policy makers and Academia.

A handwritten signature in black ink, appearing to read 'S.K. Pathak'. The signature is fluid and cursive, with a prominent initial 'S'.

S.K. Pathak

Message

Convener
Indian Business Forum, NICCI

Our Experience in Nepal - Indian Joint Ventures Perspective

The unique relationship between Nepal and India is characterized by its multifaceted nature, socio-cultural, socio-economic, and linguistic ties, along with deep familial connections. Unhindered travel between our nations holds immense potential across diverse sectors, including trade, investment, energy, tourism and infrastructure development.

Being cognizant of these unique ties between the two nations, Dabur Nepal Pvt. Ltd, a subsidiary of Dabur India Limited, one of the world's largest Ayurveda companies, was established in Nepal in 1989. Over the years, Dabur Nepal has evolved into a household name and a trusted provider of natural, herbal and Ayurvedic healthcare products. Driven by its motto: "Dedicated to Health and Wellbeing of every household", Dabur Nepal offers a vast portfolio of products across a number of categories.

The 1996 Trade Treaty marked a turning point. This was driven by the collaborative efforts of FNCCI, CII, and NICCI and resulted in extending duty-free access for Nepali products to India. This landmark agreement fostered enthusiasm for investment in Nepal, driving FDI and industrialization. Notably, Dabur Nepal is one among several successful Indian joint ventures that have thrived across various sectors, including manufacturing, financial institutions, insurance, beverages, paints, cosmetics, logistics, education, and other service sectors. These ventures have significantly contributed to Nepal's national exchequer, created employment opportunities, helped in technology transfer, and played an important role in the economic development of the country.

Some noteworthy examples include Surya Nepal Pvt. Ltd. (a subsidiary of ITC India Ltd.), Unilever Nepal Ltd, Asian Paints Nepal Pvt. Ltd, Berger Jenson & Nicholson Nepal P. Ltd, KNP Japan Pvt. Ltd, Nepal SBI Bank Ltd, Everest Bank Ltd, Life Insurance Corporation Nepal Ltd, National Insurance Co. Ltd, The Oriental Insurance Co. Ltd, Gorkha Lahari Pvt. Ltd, The Nepal Distilleries Pvt. Ltd, ICA Pvt. Ltd, Nepal Liquors Pvt. Ltd, Varun Beverages (Nepal) Pvt. Ltd, Flash Freight & Logistics Pvt. Ltd, International Genesis Technology Nepal Pvt. Ltd, and many more.

Recently, the Investment Board Nepal (IBN) gave a nod to Dabur Nepal for its investments of NPR. 9.68 billion for capacity expansion and product diversification through the re-investment route. Similarly, the Indian joint venture companies mentioned above have also consistently expanded their capacities through fresh and periodic reinvestments, ensuring their stability and growth in Nepal.

Beyond business endeavors, these joint venture companies are dedicated to the principles of corporate social responsibility, actively engaging in various initiatives to give back to society through their various CSR programs.

We are confident that the 'Handbook for Indian Investors, 3rd Edition 2024,' presented in a FAQ format, prepared by the Nepal-India Chamber of Commerce & Industry (NICCI) in collaboration with the Embassy of India in Kathmandu and the Embassy of Nepal, New Delhi, will prove to be an invaluable resource and guide for doing business in Nepal.

Sincerely,



Harkirat Singh Bedi



Acknowledgement



NEPAL-INDIA
CHAMBER OF COMMERCE & INDUSTRY
(NICCI)



The Nepal-India Chamber of Commerce & Industry (NICCI), founded in 1993, is a non-profit, autonomous bi-national organization. Its core mission is to foster economic relations, leveraging the strong bilateral rapport and playing a pivotal role in nurturing Indian investments. It also serves as a vital link for Nepalese businesses and Indian joint ventures operating in Nepal. NICCI also advocates member organizations' interests, and facilitates industry-related dialogues for mutual advancement, coordinates with relevant ministries in Nepal and diplomatic missions of both nations. NICCI's aim is to elevate Nepal as

an attractive foreign investment destination, alleviate bilateral trade and transit constraints, promote reciprocal tourism, and facilitate trade and manufacturing partnerships in Nepal.

Historically, pre-1996, Nepal's trade with India accounted for one-third of its international trade. The 1996 Trade Treaty extending duty-free access for Nepali products into India fostered enthusiasm for investment in Nepal, driving FDI and industrialization, which we term as phase I. Over the past 25 years, Nepal's international trade dynamics shifted, with two-thirds of its trade conducted with India. India is Nepal's largest trading partner and export destination, with exports surpassing NRs. 1 trillion over three fiscal years, demonstrating robust growth even amidst the pandemic. On the other side, Nepal has also become one of the major export destination of India surpassing NRs. 10 trillion in FY 2022/23.

In foreign direct investment, India consistently leads as Nepal's source, with vast prospects. Now, there have been many well-established new generation investors in India especially those of the post-1990 era, to explore investments who might be interested in fields such as manufacturing, agriculture, mining and minerals, tourism, transport, energy, ICT, health, education, banking, insurance, etc. also due to our geographical proximity and shared attributes. It is our pleasure to welcome investments from such companies into Nepal as phase II of the investment era.

Nepal's hydropower potential, now estimated to be much more than the previous estimation of 83 GW, leveraged by cascading and pump storage/picking ROR, has emerged as most prominent long term investment and presents an opportunity for collaboration to meet South Asia's energy needs. The "Handbook - Investment Guide for Indian Investors 2024," developed in partnership between NICCI, the Embassy of India, Kathmandu, and Embassy of India, New Delhi, offers valuable insights into regulatory landscapes and formalities for successful ventures in Nepal.

We extend our sincere appreciation to the Embassy of India, Kathmandu, for their continuous collaboration with NICCI in bringing forth the 3rd edition of the investment guide, maintaining the partnership that has been established since the inception. We would also like to thank the Embassy of Nepal in New Delhi for supporting the third edition of the investment guide. Our gratitude also extends to Pioneer Law Associates for their diligent effort in reviewing and enhancing the investment guide with updated information and additional sections. The Task Force extends its appreciation to Mr. Keshab Man Singh, Director General of NICCI, for skillfully overseeing the comprehensive process of revising the book, effectively coordinating with all relevant stakeholders.

Sunil KC

Vice President & Convener,
PR and Publication Committee

Kunal Kayal, FCA

Treasurer & Coordinator,
Task Force for 3rd Edition of
Investment Guide for Indian Investors

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ABBREVIATIONS

AOA	Articles of Association
Arbitration Act	Arbitration Act 1988
BAFIA	Banking and Financial Institution Act 2016
BFI	Banks and Financial Institutions
BIPPA	Bilateral Investment Promotion and Protection Agreement 2011
Bonus Act	Bonus Act 1974
Civil Code	Civil Code 2017
COD	Commercial Operation Date
Companies Act	Companies Act 2006
Customs Act	Customs Act 2007
Customs Rule	Customs Rules 2007
DOED	Department of Electricity Development
DOI	Department of Industry
DOL	Department of Labour and Occupational Safety
DTAA	Double Taxation Avoidance Agreement
EIA	Environment Impact Assessment
EPA	Environmental Protection Act 2019
EPR	Environmental Protection Rules 2020
ERC	Electricity Regulatory Commission
Excise Duty Act	Excise Duty Act 2002
Excise Duty Rules	Excise Duty Rules 2002
EXIM	Export Import
EXIM Code	Export Import Code
Export and Import Control Act	Export and Import Control Act 1957
FDI	Foreign Direct Investment
FITTA	Foreign Investment and Technology Transfer Act 2019
FITTR	Foreign Investment and Technology Transfer Regulation 2021
FERA	Foreign Exchange (Regulation) Act 1962
GON	Government of Nepal
IAOM	Industrial Area Operation and Management Regulation
IBN	Investment Board of Nepal
ICD	Inland Container Depots
ICP	Integrated Check Posts
IDML	Industry District Management Limited
IEE	Initial Environment Examination
IIPB	Industry and Investment Promotion Board
IEA	Industrial Enterprises Act 2020
IER	Industrial Enterprises Rule 2022
INR	Indian Rupee
IPR	Intellectual Property Right
IRD	Inland Revenue Department
IT	Information Technology
ITA	Income Tax Act 2002
ITR	Income Tax Rules 2003
Labor Act	Labor Act 2017
Labor Rule	Labor Rules 2018
LRO	Land Revenue Office

MCLR	Marginal Cost of funds-based Lending Rate
MOA	Memorandum of Association
MOEWRI	Ministry of Energy, Water Resources and Irrigation
MOICS	Ministry of Industry, Commerce and Supplies
MOL	the Ministry of Land Management, Cooperative and Poverty Alleviation
MOU	Memorandum of Understanding
MULA	Mutual Legal Assistance Act 2014
MW	Megawatt
N/A	Not Applicable
NCRO	Nepal Copyright Registrar's Office
NEA	Nepal Electricity Authority
NEPSE	Nepal Stock Exchange
New York Convention	New York Convention on the Recognition and Enforcement of Foreign Arbitral Award 1957
NPR	Nepalese Rupee
NRB	Nepal Rastra Bank
NRB Bylaws	Nepal Rastra Bank Foreign Investment and Loan Management Bylaws, 2021
OTC	Over the Counter
OCR	Office of the Company Registrar
p.a.	Per Annum
PAN	Permanent Account Number
PDA	Project Development Agreement
PDTA	Patent Design and Trademark Act 1965
PPA	Power Purchase Agreement
PPP	Public Private Partnership
PPPIA	Public Private Partnership and Investment Act 2019
PPPIR	Public Private Partnership and Investment Regulation 2020
RCOD	Required Commercial Operation Date
RoR	Run-of-River
Social Security Act	Social Security Act 2018
SES	Summary Environmental Study
SEZ	Special Economic Zone
SEZA	Special Economic Zone Authority
SEZ Act	Special Economic Zone Act 2016
SEZ Rules	Special Economic Zone Regulation 2017
SSF	Social Security Fund
SSS	Social Security Schemes
TDS	Tax Deducted at Source
Trade Union Act	Trade Union Act 1992
TRIPS Agreement	Trade Related Aspects of Intellectual Property Rights, 1994
TTA	Technology Transfer Agreement
UNCITRAL	United Nations Commission on International Trade Law
USD	United States Dollar
VAT	Value Added Tax
VAT Act	Value Added Tax Act 1995
VAT Rules	Value Added Tax Rules 1996
WTO	World Trade Organization

NEPAL'S POTENTIAL AND ATTRACTIVENESS AS AN INVESTMENT DESTINATION

- Foreign Direct Investment (FDI) is a key driver of economic development, modernization, income growth, and employment. It facilitates the dissemination of technological know-how in the form of new capital inputs, increases competitiveness in the domestic input market, fosters business growth, boosts corporate tax revenues and promotes international trade integration. Nepal has pursued a liberal foreign investment policy and endeavored to cultivate an investor-friendly environment in order to attract FDIs. Foreign investments in Nepal take the form of, among others, technology transfer, equity investment by foreign individuals or institutional investors, joint venture with Nepalese investors or a wholly owned foreign enterprise.
- The government of Nepal has prioritized encouraging foreign direct investment to overcome the deficit in private capital formation. Some of the major laws that affect foreign direct investment in Nepal are:
 - Foreign Investment and Technology Transfer Act 2019,
 - Foreign Exchange (Regulation) Act 1962,
 - Public Private Partnership and Investment Act 2019,
 - Foreign Investment and Loan Management Bylaws 2021 and
 - Industrial Enterprises Act 2020.

Similarly, FDI laws and regulations are administered and implemented by:

- Department of Industry (DOI),
 - Investment Board of Nepal (IBN), and
 - Nepal Rastra Bank (NRB, the Central Bank)
- India is the largest source of FDI for Nepal, contributing NPR 88.6 billion. The majority of India's foreign direct investment (96.9%) is concentrated in three industries: electricity, gas, steam, and air conditioning (42.9%), manufacturing (35.9%), and financial and insurance services (18.1 percent). The investment in electricity, gas, steam, and air conditioning (mainly the 12-hydropower industry) remains the greatest in terms of paid-up capital.¹
 - Nepal's strategic location allows it to share a border with India, granting it free and simple access to the Indian market. In addition, there are bilateral investment protection and double tax avoidance agreements between Nepal and India, which make Indian investments in Nepal quite appealing. Other opportunities and advantages for foreign investment in Nepal include the availability of cheap labor, a guarantee against expropriation, a welcoming visa policy for foreign investors, representatives, and their dependents, a zero-tariff on products from Least Developed Countries (LDCs) such as duty-free, quota-free market access to the European Union under Everything But Arms (EBA) arrangements and duty-free US market access to seventy-seven types of garment, textile, and handbag items upto 2025.²
 - Foreign investors have made praiseworthy investments in hydropower, industry, manufacturing, service, tourism, construction, agriculture, minerals, and energy throughout the years. Beyond its ecological and climatic advantages over India and China, the country's location in the Himalayas, home to eight of the world's highest mountains, rich flora and fauna, hill terrains, lakes, rivers and religious centers like Janakpur, Lumbini, Pashuptinath and Muktinath offers enormous potential for

1 Source: Survey Report on Foreign Direct Investment in Nepal 2021-22 .pdf. (<https://www.nrb.org.np/contents/uploads/2023/09/FDI-Survey-2021-22-2.pdf>)

2 Source: Handbook on Duty-Free and Quota-Free Market Access and Rules of Origin for LDCs - PART I: QUAD Countries (unctad.org)

tourism. From near sea level in the Terai area to the world's highest summit, Nepal's scenery is incredibly diverse. Within only 193 kilometers, the country experiences all four seasons, making it an attractive investment destination for businesses in fields as diverse as herbal and organic farming. In addition, FDI in the medical tourism industry is booming. Thanks to Nepal's proficiency in procedures such as cataract removal, heart bypass surgeries and organ transplants.

- Nepal is blessed with abundant water-resource of over 6,000 perennial snow-fed rivers and rivulets across the country flowing from the Himalayas, 1,000 of which are more than 11 km long and about 100 of them are longer than 160 km. They not only provide a reliable source of water for different purposes but, together with the steep topography of the country, also offer significant opportunities for hydropower generation, having potential of hundreds of thousand MW electricity. It is estimated that Nepal's technical potential for hydropower is 83 Gigawatts (GW), and although all the technically potential water resources may not be developed, around 42 GW is considered economically viable. However, in addition to conventional run-of-river and reservoir projects, because of new concept and technology in hydropower sectors such as cascade and pump storage/peaking Run-of-River (ROR) projects have added medium and large hydropower projects more viable with extended capacities at lower project costs.

Hydropower in Nepal - at a Glance		
(As on end February, 2024)		
Running Power Plants	No. of Projects	MW
100 MW or above	2	600
Less than 100 MW	142	2,025
Subtotal	144	2,605
Construction License Issued	No. of Projects	MW
100 MW or above	22	4,804
Less than 100 MW	227	4,797
Subtotal	249	9,601
Application for Construction	No. of Projects	MW
100 MW or above	25	9,334
Less than 100 MW	79	2,358
Subtotal	104	11,068
Survey License Issued	No. of Projects	MW
100 MW or above	18	6,628
Less than 100 MW	70	1,814
Subtotal	88	8,442
Application for Survey License	No. of Projects	MW
100 MW or above	3	2,006
Less than 100 MW	50	802
Subtotal	53	2,808
Total (Apart from less than 1 MW Projects)	638	34,544

Source: Department of Electricity Development, GoN

The Hydropower projects mentioned above are exclusive of the mega projects being handled by the GoN as national pride projects and JV at G2G level.

- History of hydropower in Nepal dates back to more than one century with commissioning of 500 KW Pharping Hydropower Plant in 1911. According to Department of Electricity Development of Nepal, there are already 32000 plus MW hydro power underway through more than 600 projects in different phases like operating, under construction, applied for construction, under survey and applied for survey and still there are many more to come in. Thus, the potential in hydro energy sector is abundant in Nepal to significantly cater the industrial and domestic demand of neighbouring countries like India and Bangladesh. Nepal concluded a much awaited Power Trade Agreement with India in 2014 paving the way for trade of electric power just like other marketable commodities. This now ensures predictability of market once electricity is produced. It presents an opportunity not only to provide a significant source of clean power for Nepal and neighboring countries but also to bridge domestic economic disparities. Within BBIN sub-region, both India and Bangladesh need power not only to sustain economic growth and developmental aspirations but also to ensure the safer life of people thereby fulfilling international commitments towards improving climate change to make a shift towards zero emission by stipulated time frame through renewable clean and green energy. With such promising prospects, Nepal seeks a closer co-work for hydropower development for bilateral and sub-regional transformative outcome. The developers from India can come up with the proposal for sole investment or for joint venture with Nepalese promoters on already identified hydropower projects or a fresh project for direct export to India or third country after construction with a long term vision. A separate chapter has been created in detail in this investment guide with formalities for investing in hydropower in Nepal.
- Minerals, both metallic and nonmetallic, and other natural items are abundant throughout the nation. Massive reserves of talc, limestone, and other building materials may be found here.

■ COUNTRY PROFILE

Geography of Nepal

Nepal, or the Federal Democratic Republic of Nepal as it is formally called, is a South Asian landlocked country. The Himalayas cover a large portion of the nation, although the Indo-Gangetic plains are also a feature of the country's geography. Nepal is home to people of many different ethnicities, languages, religions, and cultural backgrounds. Nepal is a secular federal parliamentary republic with 7 distinct provinces, as established by the country's 2015 constitution. Nepal was previously split into 14 administrative zones that were then consolidated into five development areas before the current structure of seven provinces was implemented.

Statistics of Nepal

Government	Federal Parliamentary Republic
Capital	Kathmandu
Area	147,181 km ²
Population	30,547,580
Per Capita GDP (United States Dollar ["USD"])	1,336.5
Official Language	Nepali at the national level Nepali along with Maithili and Bhojpuri in Madhesh Pradesh Nepali/English for legal documents
Currency	Nepalese Rupee ["NPR"] 1 Indian Rupee [INR] = 1.60 NPR (Pegged)

Political and Legal System in Nepal

The present written and governing Constitution of Nepal was adopted in the year of 2015 by the constituent assembly. As per the Constitution of Nepal (2015), the power vested in the state has been seen to be apportioned among three crucial branches in order to ensure a separation of powers, thus guaranteeing

checks and balances. These branches are the parliament, executive and judiciary. Any and all laws, that may be enacted by the parliament or any other government agencies (in the forms of directives, circulars etc.) must be seen to be consistent with the constitution, failing which, it is within the power of the Supreme Court to render them invalid. Thus, the constitution of Nepal (2015) is seen to be the fundamental law of the country.

The head of the state is the President while the head of the government is the Prime Minister. The federal and state parliamentary system is followed in Nepal. The federal legislature is bicameral with two houses. One is the House of Representatives and the other is the National Assembly, which on the state level, is the state assembly. The State's Executive power is vested with the council of ministers.

Nepal's common law-based legal system is greatly influenced by Hindu customary law. Acts passed by the Parliament, regulations developed by the Council of Ministers or other appropriate law-making organizations, and circulars and directives issued by government agencies in accordance with delegated laws are included in the legal instruments. Various policies may also be issued by the government. In general, the policies aid in understanding the government's attitude and are the suggested course of action for the future; nevertheless, they are not legally binding and neither do they provide any rights or obligations. Furthermore, the Act's provisions cannot be overridden by Policy.

The Constitution guarantees the independence of powers for the judiciary. In Nepal, there are three different levels of courts: the District Court, the High Court, and the Supreme Court. The Supreme Court is the "court of record" and possesses the authority to conduct judicial reviews.

The right to property has been recognized by the Constitution as a fundamental right, and the Constitution guarantees that any property that is located within the confines of Nepal's boundaries will not be taken over by the government. The government is prohibited from nationalizing any sector of the economy. The sole permissible exception to this rule is that the government is allowed to purchase privately owned land if it is required for public use, as long as the owners are compensated accordingly. In the case of public interest, requisition, or acquisition, or if it puts an encumbrance on the property of another person, non-nationalization is an exception.

Economic System

The country relies largely on imports of raw resources and exports of its agricultural and forestry goods to maintain its economy. As per recent years statistics, exports include palm oil, soya bean oil, polyester yarn, cardamom, jute, zinc sheets, juice, particle board, tea, textiles, rosin, oil cakes, thread, Ayurveda medicine, noodles, shoes and sandal, pashmina, readymade garments, woolen carpets etc. while imports include petroleum products, vehicle and spare parts, crude soya bean and palm oil, machinery and parts, rice/paddy, gold and silver, telecommunication equipment and parts, medicine, building materials, coal, readymade garments, thread, vegetables and fruits, computer and parts, fertilizers, metals, and most consumer items. Nepal's economic system is seen to be a combination of capitalism and socialism. The nation has a Privatization Act from 1993 and has constantly pursued a liberalization agenda since 1990 in an effort to engage the private sector in new areas of trade and commerce.

FOREIGN DIRECT INVESTMENT ("FDI")

The government of Nepal has established a number of measures to encourage and safeguard foreign investment in the country. The government of this nation has passed the Foreign Investment Policy, 2014 in order to protect the legal standing of investors and describe the amenities that have been made available. Currently, Nepal possesses a market that is open and liberalized, which welcomes international investment in a diverse assortment of industries. Additionally, Nepal is a member of the World Trade Organization, which enables the country to take advantage of the concessions that are made available to WTO members.

Nepal is a landlocked country that is located 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 ideal place for new business ventures. Additionally, there is statutory protection for investments in

place in this country, which ensures that each and every investment is safeguarded. Investors also have the ability to invoke rights protecting their investments and properties from being nationalized. 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.

Since Nepal has opened a wide variety of its industries to the possibility of receiving foreign investment, the country has become a dynamic and alluring destination for this type of investment. The majority of Nepal's industrial sectors are open to 100 percent foreign ownership, although several industries have restrictions on the maximum amount of foreign investment that can be held in such sectors.

The door to foreign investment in Nepal is wide open across a diverse range of economic fields and sizes of industries; the government of Nepal has expressed its acceptance of capital in both small and large sized businesses. Because of Nepal's advantageous geographic location, several industries, including energy and tourism, have been able to make the most of the potential investment opportunities available in their respective environments. The government has also played a role in this by elevating the status of international investment as a top priority. Also, Indian investors do not need visas to make investments in Nepal as is required by citizens of other countries. In addition to this as of 2022, the government has revised the minimum threshold for foreign direct investment (FDI) to NPR 20 million from NPR 50 million.

Nepal has received foreign investment from 57 different countries as of mid-July 2022. In terms of total FDI stock, India ranks top position with NPR 88.6 billion followed by China (NPR 33.4 billion), Ireland (NPR 20.9 billion), Singapore (NPR 16.1 billion) and Saint Kitts and Nevis (NPR 15.1 billion) as per the 2021/2022 Survey Report on Foreign Direct Investment in Nepal published by the Nepal Rastra Bank.

FDI Stock by Countries

There is a significant gap between approved FDI and actual net FDI inflows in Nepal. The FDI approval may simply indicate an intended investment (the approved investment may not actually take place) or there may be significant time lags between approval and actual investments. In some instances, the realization of the approved investment may take place over several years as usually seen in projects with longer gestation periods. As a result, there exists a gap between FDI approval and actual FDI inflow. Keeping in view these facts, we have considered the statistics of the latest Survey Report unveiled by Nepal Rastra Bank, the central bank of Nepal on "FDI in Nepal, 2021-22" up to Mid-July 2022 published in September, 2023.

According to the survey report on foreign direct Investment in Nepal 2021/22 published by the Nepal Rastra bank in September 2023, Nepal has received foreign investment from 57 different countries as of mid-July 2022, where India is the largest source of FDI for Nepal, maintaining in the top position with FDI stock of NPR 88.59 billion, followed by China (NPR 33.34 billion), Ireland (NPR 20.9 billion), Singapore (NPR 16.1 billion) and Saint Kitts and Nevis (NPR 15.1 billion).

The major countries for FDI in Nepal as per the report is as follows:

MAJOR COUNTRYWISE FDI STOCK IN NEPAL

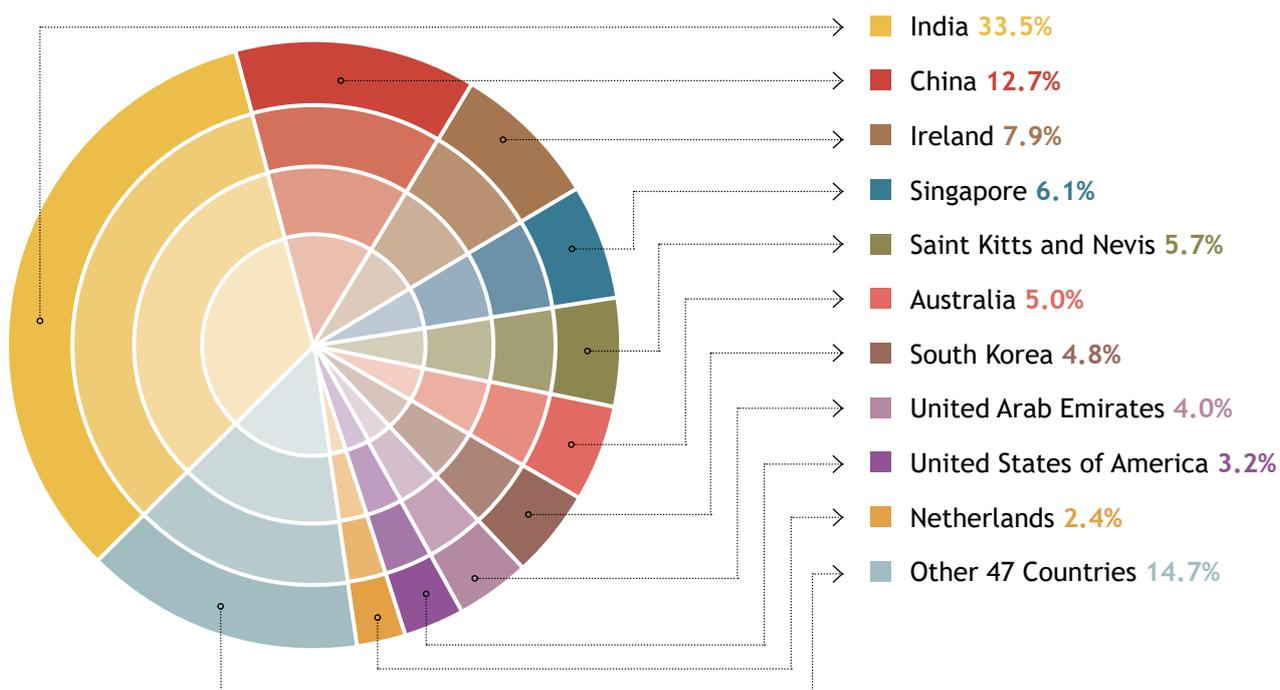
As on Mid-July 2022

Sr. No.	Country	FDI Stock (Nep. Rs. in Million)	Percentage
1	India	88,592.6	33.5%
2	China	33,448.6	12.7%
3	Ireland	20,896.7	7.9%
4	Singapore	16,074.0	6.1%
5	Saint Kitts and Nevis	15,091.5	5.7%
6	Australia	13,155.9	5.0%
7	South Korea	12,772.0	4.8%

8	United Arab Emirates	10,646.7	4.0%
9	United States of America	8,414.8	3.2%
10	Netherlands	6,334.0	2.4%
11	Other 47 Countries	38,902.7	14.7%
	Total	2,64,329.5	100.0%

(FDI stock = Paid-up capital + Reserves + Loans)

Source: Survey Report of NRB on FDI in Nepal 2021/22 published in the last week of September 2023



FDI Stock by Major Sectors

The report reveals that the Electricity, gas, steam, and air conditioning sector has the highest FDI stock of Rs. 86.8 billion (32.8 percent of the total) followed by the manufacturing sector (Rs.77.9 billion, 29.5 percent) and financial and insurance services sector (Rs.67.8 billion, 25.6 percent).

MAJOR TEN SECTORS OF FDI STOCK IN NEPAL

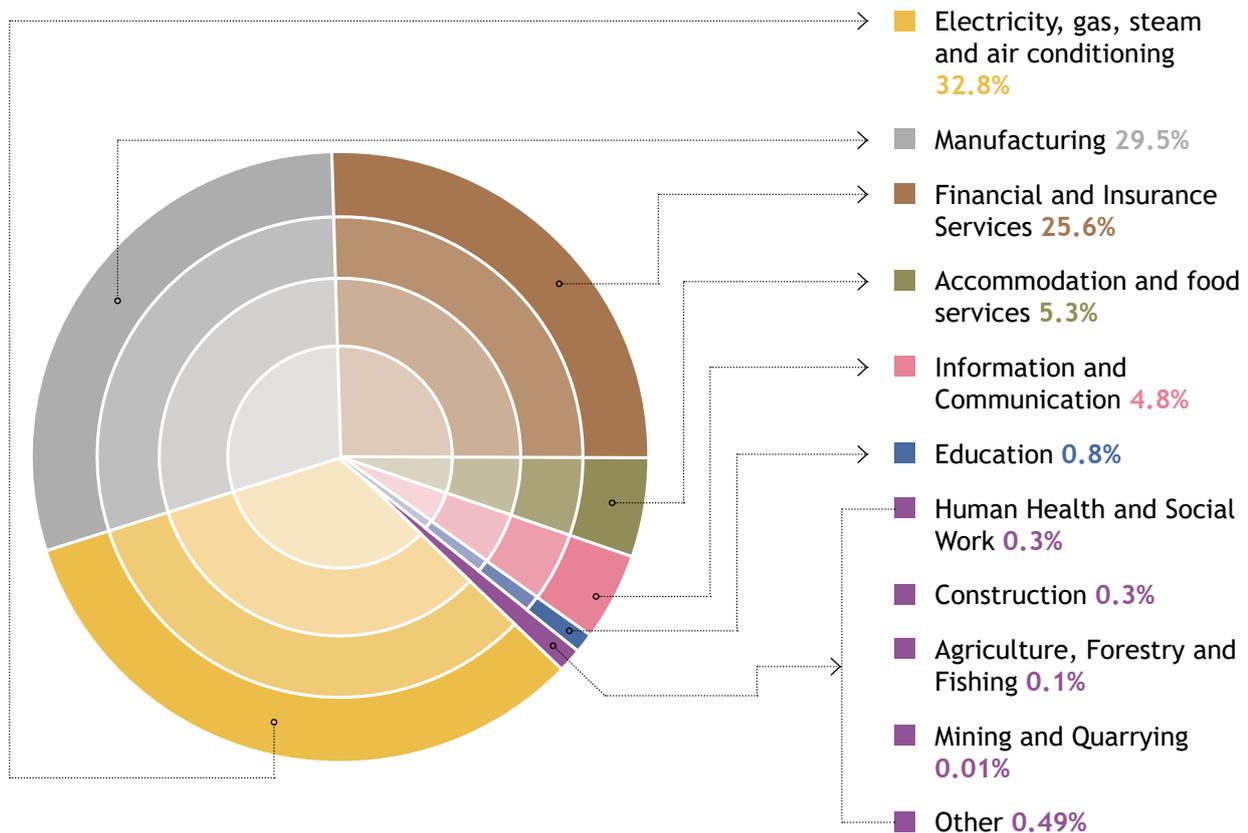
As of Mid-July 2022

S.N.	Sectors	Nep. Rs. Million	Share in Total (%)
1	Electricity, gas, steam and air conditioning	86,815.0	32.8%
2	Manufacturing	77,928.7	29.5%
3	Financial and Insurance Services	67,780.5	25.6%
4	Accommodation and food services	13,884.1	5.3%
5	Information and Communication	12,733.0	4.8%
6	Education	2,074.7	0.8%
7	Human Health and Social Work	735.4	0.3%

8	Construction	660.9	0.3%
9	Agriculture, Forestry and Fishing	267.9	0.1%
10	Mining and Quarrying	36.1	0.01%
11	Other	1,413.3	0.49%
	Total	264,329.6	100

The classification of major sectors is based on International Standard Industrial Classification, Fourth Revision (ISIC Rev. 4)

Source: Survey Report of NRB on FDI in Nepal 2021/22 published in the last week of September 2023



FDI Stock from India by Major Sectors

As per the same report, the majority of India's FDI stock (96.9 percent) is concentrated in three sectors - electricity, gas, steam, and air conditioning (42.9 percent), manufacturing (35.9 percent), and financial and insurance services (18.1 percent). In terms of paid-up capital, the investment in electricity, gas, steam, and air conditioning (primarily the hydropower sector) remains the highest.

Chapter 1

DOING BUSINESS IN NEPAL: General Overview

Indian investors can make equity investment and carry out business activities in Nepal by adopting any of the following commercial presence:

(a) Limited liability companies:

An Indian investor can invest or operate a business in Nepal

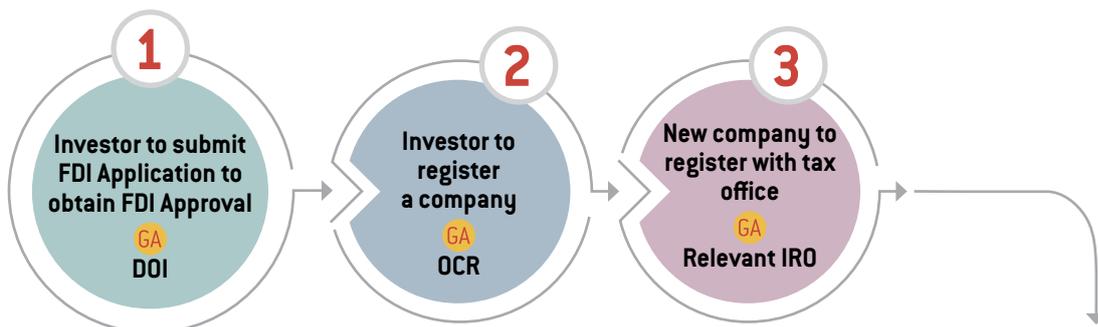
- (i) by incorporating a limited liability company in Nepal,
- (ii) by acquiring shares of a limited liability company already in existence.

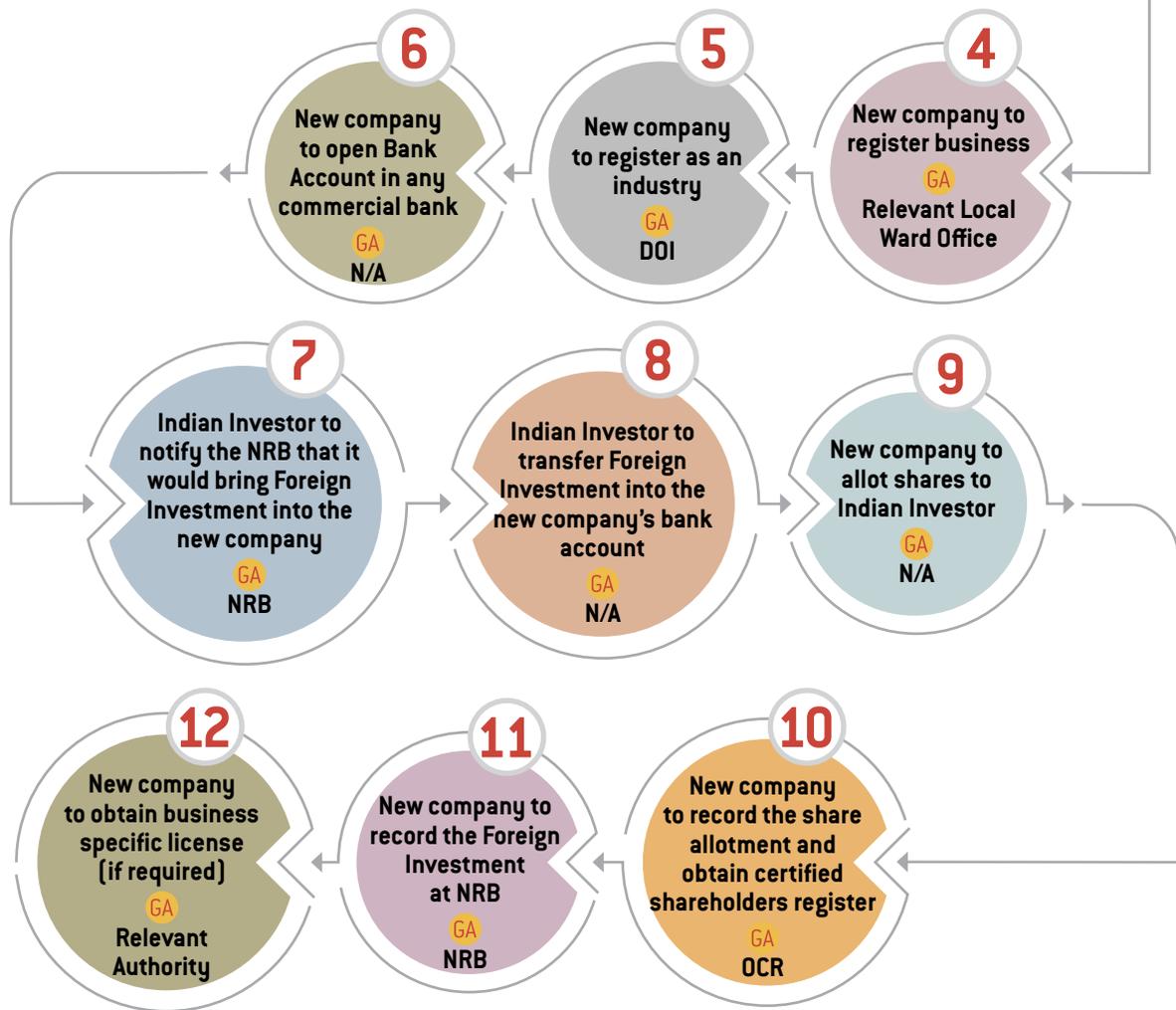
Indian investors can incorporate a private limited company or a public limited company. Private limited companies can also be incorporated with a single shareholder. At least seven shareholders are required to incorporate public limited companies. There is no provision for registration of limited liability partnerships.

(i) By incorporating a limited liability company:

The following table depicts general procedures for making investment by one or more Indian investors by setting up a new limited liability company (includes both private and public companies) in Nepal with or without collaboration with a Nepalese investor:

Foreign investment for establishment of limited liability company (public limited/private limited)





GA = Governing Authority

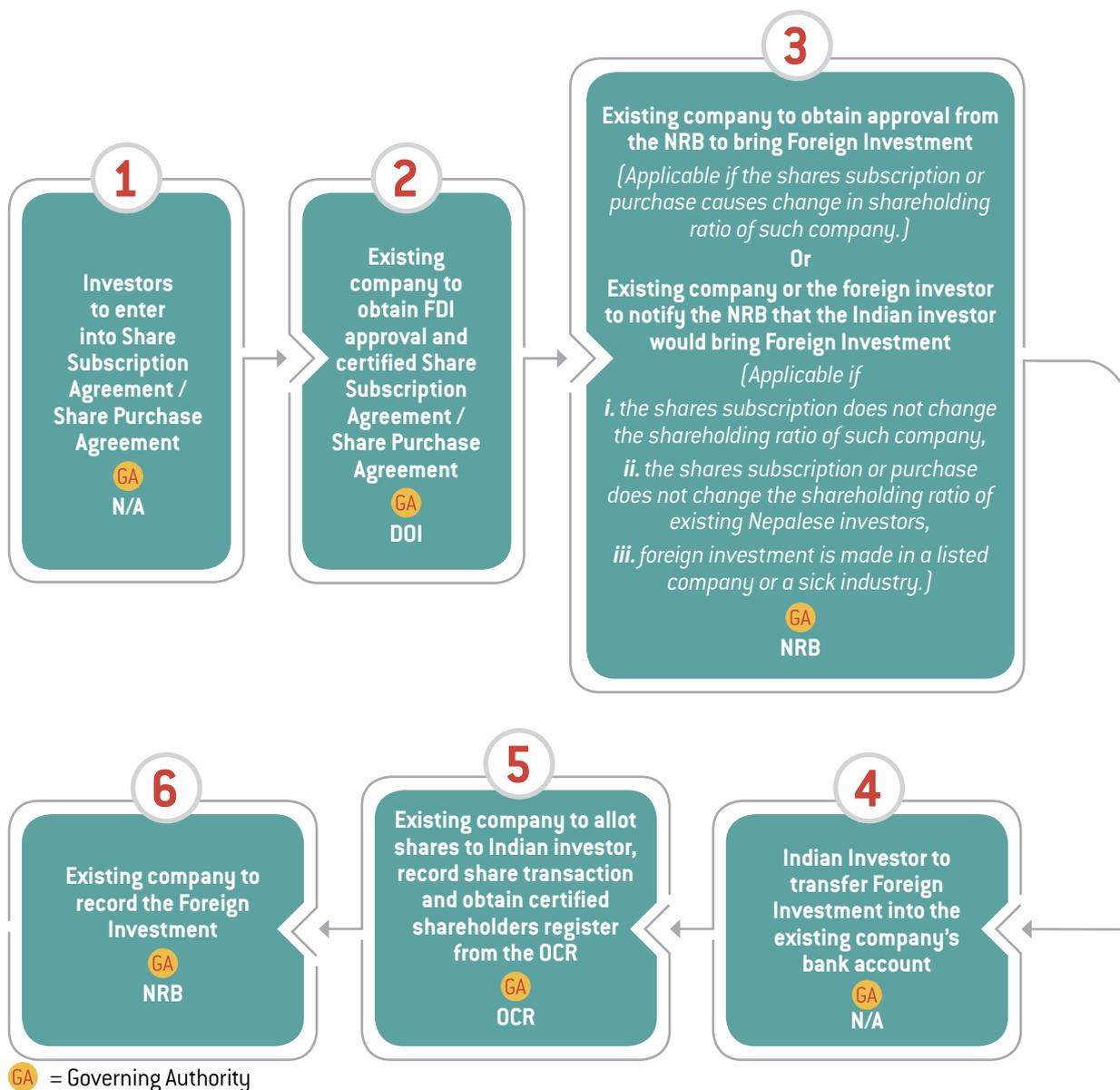
(ii) By acquiring shares of an existing limited liability company

Investment in an existing company can be done in two ways:

- (i) by purchasing shares from the existing shareholder/s in the name of the Indian investor, or
- (ii) by subscribing new shares of the existing company by the Indian investor, either from the reserved shares or by increasing the issued capital of the company.

A share purchase agreement is required between the Indian investor and the intended seller (shareholder of the company) for the purchase of shares. A share subscription agreement is required between the Indian investor and the existing company for subscription of shares. The following table depicts the general procedure for making investment by one or more Indian investors in an existing company:

Foreign investment in an existing company



(b) Branch Office:

Indian companies can also register Branch Office to undertake business activities in Nepal. This option will be available only if the Indian investors are registered as a company in India.

(i) Mandatory Branch Office Registration

The Companies Act 2006 (“Companies Act”) of Nepal requires registration of a Branch Office if a foreign company is undertaking business activity in Nepal for a continuous period of one month or more from any office or any place used for that purpose. The mandatory requirement of branch registration is not applicable for Indian companies in cases where-

- (a) the Indian investor is making investment in share capital, or
- (b) providing debt to an entity in Nepal, or
- (c) participating in management of such entities (for example in the form of management services).

These activities are not considered as “carrying out business activity” in Nepal. However, these activities require approval under the foreign investment laws of Nepal.

(ii) Prerequisites for Branch Office Registration

A Branch Office in Nepal can be set up by obtaining government endorsement, based on which the Office of the Company Registrar will register such Branch Office. There are two ways to obtain government endorsement:

- (a) by obtaining recommendation or approval from concerned regulatory authority, or
- (b) by entering into an agreement with Government of Nepal (GON) authority.

As per Companies Act, an Indian company is required to obtain foreign investment approval from the concerned line government authority to set up a Branch Office in Nepal. Similarly, if an Indian company enters into an agreement with competent government authority, such agreement itself is also deemed to be the approval for registration of Branch Office.

FITTA is a special legislation that deals with foreign investment in Nepal. As per Section 8 of FITTA, a foreign industry may make foreign investment in Nepal by establishing its Branch industry thereby requiring the company to be registered as an industry in the country of its incorporation. However, FITTA does not define foreign industry and has mentioned that the provisions relating to Branch industry shall be as prescribed in the rules. In present context, the Department of Industry is not providing approval for registration of branch on the basis that they have no jurisdiction. Therefore, at present, Indian investors have the option to operate in Nepal on the basis of branch registration only in a situation where they have entered into an agreement with any government authority in Nepal or if there is any specific government authority for providing specific approval for Branch Office registration. This generally may be for the supply of goods or services or selection for project implementation in Nepal on the basis of public bidding. The registered Branch Office can undertake all such activities that are covered under such agreement entered into with the government authority on the basis of which the Branch Office is registered.

The following table depicts the step-by-step process of the registration of branch office:

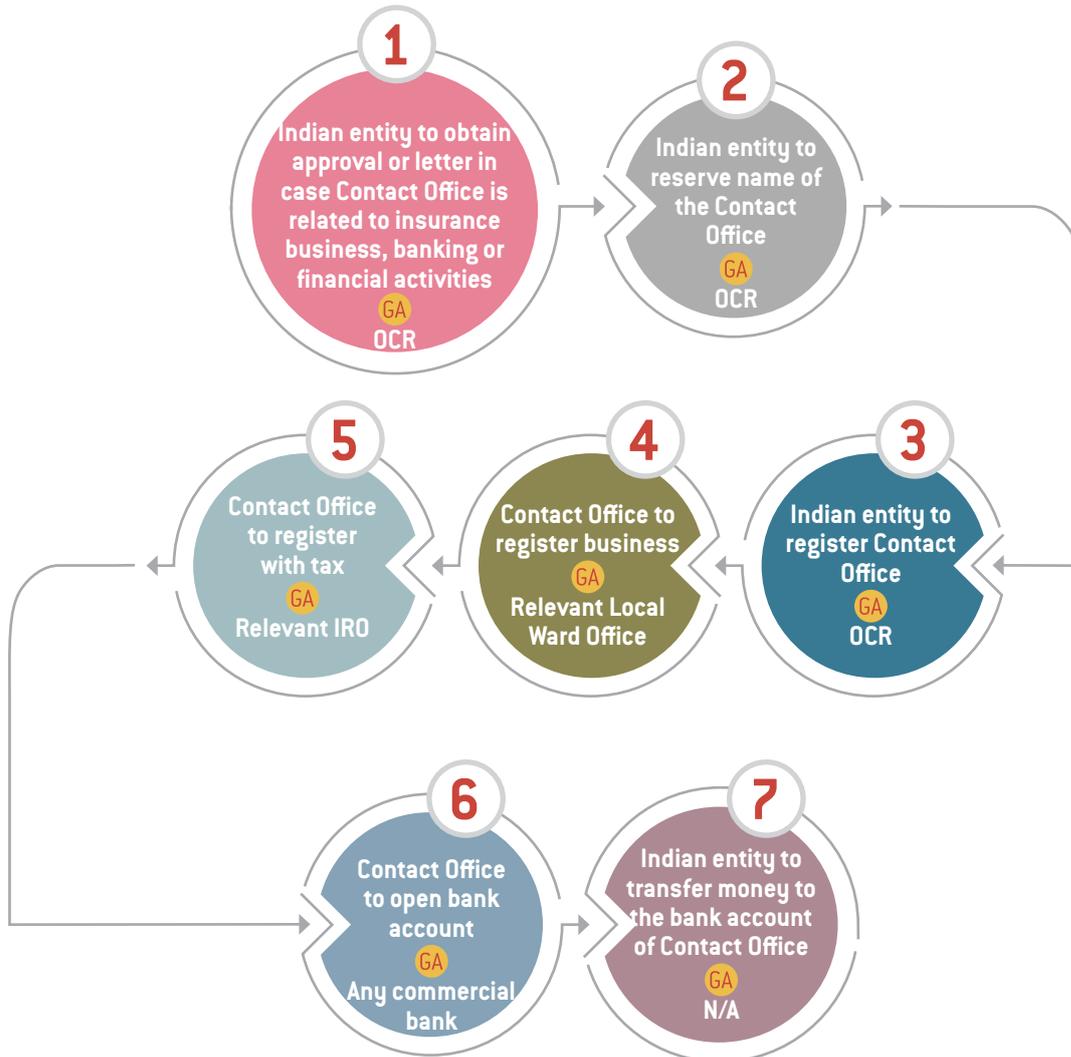


GA = Governing Authority

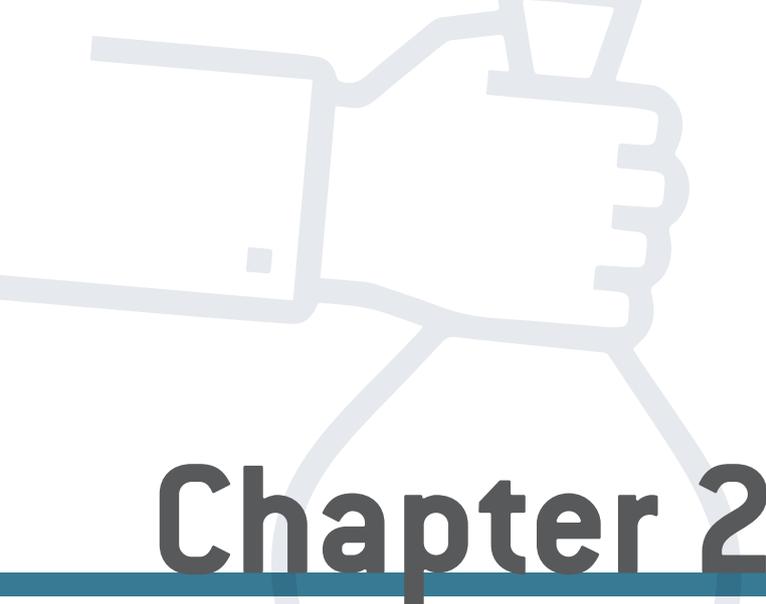
(c) Contact (Liaison) Office:

A contact office is required to be registered if an Indian company appoints any person in Nepal for the purpose of regular contact. The registration of a contact office entitles Indian companies to open an office in Nepal as well as hire required employees. However, Contact office is not permitted to undertake any business activities including marketing, advertisements and promotion of the Indian Company. They can carry out correspondence and act as a point of contact on behalf of the Indian company in Nepal, and provide assistance without charging any cost to any person in Nepal willing to use or import the products and service of the Indian company. The process of incorporation of contact office is same as that of a Branch office.

The following table depicts the step-by-step process of the registration of branch office:



GA = Governing Authority



Chapter 2

INVESTING IN NEPAL: Regulation of Foreign Investment

1. What laws regulate foreign investment in Nepal?

The relevant laws dealing with matters related to foreign investment are:

- a. Foreign Investment and Technology Transfer Act, 2019 (“FITTA”)
- b. Foreign Investment and Technology Transfer Regulation, 2021 (“FITTR”)
- c. Foreign Exchange (Regulation) Act, 1962 (“FERA”)
- d. Industrial Enterprises Act, 2020 (“IEA”)
- e. Industrial Enterprises Rule, 2022 (“IER”)
- f. Nepal Rastra Bank Foreign Investment and Loan Management Bylaws, 2021 (“NRB Bylaws”)

Department of Industry (“DOI”), and Nepal Rastra Bank (“NRB”) are the main regulatory bodies with regard to foreign investment in Nepal.

2. What is foreign investment?

- a. The following investments made by a foreign investor in an industry are considered as “foreign investment”:
 - i. Investment in shares,
 - ii. Reinvestment of the dividends derived from foreign currency or shares,
 - iii. Lease Financing of certain assets of airlines, ships, machinery,
 - iv. Investment in venture capital fund,
 - v. Investment in listed securities through secondary securities market,
 - vi. Investment by purchasing shares or assets of a company,
 - vii. Investment received by entity in Nepal after issuing its securities in a foreign capital market,
 - viii. Investment made through technology transfer (licensing of foreign intellectual property, franchising, management, technical and marketing services), and
 - ix. Investment done by establishment and expansion of industry in Nepal.

Among the types of foreign investment listed above, shares investment, lease financing of assets, and investment made through technology transfer have been practiced in Nepal before. Ever since the enactment of FITTA, foreign investment in venture capital fund and listed securities as well as investment by way of issuing securities in foreign capital market have not been carried out due

to ambiguity in existing laws and also because of lack of regulations that enable such investment activities in Nepal.

- b. FITTA provides the list of investors who can make foreign investment in Nepal. As per FITTA, an Indian Investor can be an individual, international organization, government bodies and other corporate entities, or firms. However, in certain sectors like financial institutions, investment can be made only by foreign financial institutions.

SHARE INVESTMENT

3. What sectors are open for Indian investors?

Nepalese law permits foreign investment in a wide range of activities and most of these sectors of business are open for investment. However, foreign investment is allowed only in industrial activities and not in trading activities. Nevertheless, IEA permits manufacturing companies to carry out the import activity within prescribed terms and conditions to examine the viability of the product in the Nepalese market.

Foreign investment is permissible in sectors which are (a) classified as industry (the “Positive List”), and (b) sectors which are not included in negative list (the “Negative List”).

Foreign investment in certain regulated sectors like banking or insurance is permitted even if not classified as an industry. Foreign investment in these regulated sectors is governed by sector-specific laws.

i. Industry Classification

Section 3 of the IEA classifies industry into eight categories and lists the nature of activities in each of these categories:

- (1) Energy-based Industry,
- (2) Manufacturing industry,
- (3) Agriculture and Forestry product-based Industry,
- (4) Mining Industry,
- (5) Infrastructure Industry,
- (6) Tourism Industry,
- (7) Industry based on Information technology, Communication technology and Information dissemination technology, and
- (8) Service Industry.

The Government of Nepal (“GON”) can include business activities not included in any of the industry classification of the IEA. For this, the “GON” can publish a notice in the official Gazette upon recommendation of the Industry and Investment Promotion Board (“IIPB”).

ii. Negative List

The negative list provided in the Schedule I of FITTA can be amended by the GON by publishing a notice in the Nepal Gazette.

Schedule A

(a) Poultry farming, fish farming, bee keeping, fruits, vegetable, oil seeds, pulse seeds, milk industry and priority production in agricultural sector except large scale industries related to the export more than seventy-five (75) percent of their production.

(b) Small and cottage industry,

(c) Personal service business (such as hair salon, tailoring, driving, etc.),

(d) Industry producing arms and ammunitions, bullets and shell, gun-power, explosive materials, nuclear, biological and chemical [N.B.C.] weapon, 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 involved in tourism; guide, trekking and mountaineering guide, rural tourism including homestay;
(g) Business of mass communication media (newspaper, radio, television and online news), motion picture of national language;
(h) Management, account, engineering, legal consultancy service and language training, music training, computer training; and
(i) Consultancy service having foreign investment of more than 51 percent.
(j) Ride sharing business having more than 70% foreign investment.

4. Can Indian investors invest in Nepal via Automatic Route i.e., without any governmental approval for foreign investment?

Yes, Indian investors will soon be able to make foreign investment in Nepal via the Automatic Route. The amendment of Foreign Investment and Technology Transfer Regulation, 2021 that got effectuated on 20 April 2023 (“**Amended Regulation**”) specifies the conditions for operation of the Automatic Route. Likewise, the GON Gazette Notification of 2 October 2023 prescribes (a) upper ceiling of total capital investment and (b) permissible industrial sectors for making foreign investment through Automatic Route (the “**Notice**”).

The Automatic Route is not operational yet but it will be once the DOI launches online system for it. The DOI envisages implementing an electronic system for foreign investment through Automatic Route, whereby foreign investors will be able to upload documents online, with the option to revise and correct them before submission. After review and verification by the DOI, investors can obtain foreign investment approval certificate electronically along with an e-mail confirmation.

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

Pursuant to the Amended Regulation and Notice, 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:

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

ii. Industries where FDI can be made through Automatic Route

The Notice has identified various industrial sectors that are open for foreign investment through automatic route, which are enlisted below:

Energy-based Industries

S. N.	Industry Sector
1	The industry manufacturing machines, and equipment used to generate energy from air, solar power, biomass or other sources.
2	Energy based on Biogas
3	Energy Produced as a by-product of the Sugar Industry
4	Study of Potential of Energy

Industries based on Agriculture and Forest Products

S. N.	Industry Sector
1	Fruits and Vegetables Processing

2	Establishment and Operation of Green-Houses
3	Silk Processing
4	Tea and Coffee Processing
5	Herb Processing

Infrastructure Industries

S. N.	Industry Sector
1	Vehicle Parking
2	Export Based Goods Processing Zone
3	Polluted Water Purification Industries (Wastewater Treatment Plant)
4	Building Film City/ Building Film Studio
5	Construction and Operation of Warehouses

Tourism Industries

S. N.	Industry Sector
1	Motel, Hotel, Resort, Bar and Restaurant
2	Fun Park, Water Park
3	Conference and Sports Tourism

Information Technology Industries

S. N.	Industry Sector
1	Technology Park
2	I.T. Park
3	Biotech Park
4	Software Development
5	Data Processing
6	Digital Mapping
7	Business Process Outsourcing (B.P.O), Knowledge Process Outsourcing (K.P.O)
8	Data Center, Data Mining, Cloud Computing
9	Web Portal, Web Design Service

The minimum capital requirement shall not be triggered while investing through automatic route for industries based on information technology.

Service-oriented Industries

S. N.	Industry Sector
1	Mechanical Workshop
2	Construction Business
3	Hospital
4	Nursing homes, Clinics, Polyclinics, Rehabilitation homes, Physiotherapy Clinics, Ayurvedic and other alternative Hospitals
5	Sports Services, Swimming pools

Production based Industries

S. N.	Industry Sector
1	Livestock and fishery feed production
2	Processing and Packaging of Livestock and Fishery Meat
3	Production of oil fat from basic raw materials
4	Production of Starch, Glucose, etc.

5	Bakery Goods Production
6	Confectionery and Biscuit Production
7	Sugar Production
8	Beverage Production (Non-Alcoholic)
9	Surgical, Orthopedic Sectors
10	Production of Electrical Wire

5. What are the government approvals that are required for Indian investors to invest in Nepal?

The FDI regime in Nepal consists of approval-based mechanism as well as automatic approval mechanism. FDI via Automatic Route is detailed in query 4. The DOI approves all foreign investment made pursuant to the FITTA. The IBN has been mandated to implement hydropower projects having more than 200 MW capacity, however it is unclear if the IBN will continue to approve foreign investment of hydropower projects with more than 200 MW capacity.

The NRB regulates approval and notification for the inflow of foreign investment. As per the NRB Bylaws, NRB approval to bring foreign investment into Nepal is required when any share transaction related foreign investment changes the shareholding ratio of an existing company in Nepal. The following table points out the scenarios where the Indian investor must take approval or notify the NRB before bringing foreign investment into Nepal:

Foreign Investment requiring NRB Approval or NRB Notification

NRB Approval	NRB Notification
(i) If the shares subscription or shares purchase alters shareholding ratio of a Nepalese company.	(i) Establishment of new industry via Foreign Investment [Greenfield Investment] , (ii) If the share transaction related foreign investment does not change the shareholding ratio, (iii) If the shares subscription does not alter shareholding ratio of existing Nepalese shareholders of an established company, (iv) If foreign investment is made in a listed company, (v) If foreign investment is made in a Sick industry (<i>as per the Industrial Enterprises Act 2020</i>)

The following government approvals and notifications are relevant for foreign investment by Indian investor:

i. Approval for Setting up a Company

The Indian investor can bring investment for setting up a company in Nepal after obtaining DOI approval followed by making notification to the NRB about bringing such foreign investment.

ii. Approval for Share Purchase

The Indian investor will have to undergo the process of obtaining foreign investment approval from the DOI, then after that it must procure the NRB approval for bringing foreign investment in Nepal.

iii. Approval for Share Subscription

Similarly, the Indian investor will firstly have to obtain foreign investment approval from the DOI. NRB approval may have to be taken if shares subscription alters shareholding ratio of a Nepalese company. Otherwise, in cases where the shareholding ratio of existing Nepalese shareholder does not change, then notification to NRB will be sufficient.

In cases of both shares purchase and shares subscription, besides DOI Approval, recommendation or approval of sectoral regulatory authority may be necessary for changing the ownership of a

company. Such recommendation or approval would be necessary only if the concerned sectoral law expressly mentions that doing so is a pre-requisite. In case of hydropower Generation Company, the energy law requires it to take prior approval from the Electricity Regulatory Commission (the “ERC”) for changing ownership, and the DOI issues foreign investment approval based on the ERC’s approval. However, in case of industry like IT where its sectoral law does not require prior approval for changing ownership, DOI issues foreign investment approval without another regulatory authority’s recommendation/approval. Likewise, if a company is being regulated by the IBN, then IBN approval may be sufficient instead of DOI approval.

6. Is there a minimum amount required to be invested?

As published in the Gazette notification by Government of Nepal, FITTA requires every foreign investor to invest at least NPR 20 million in each company they invest in. The GON’s Gazette Notification dated 2 October 2023 waived minimum foreign investment requirement for making foreign investment through the Automatic Route in Information Technology industry.

7. Is there a ceiling on foreign ownership?

Most of the sectors like manufacturing, hotel, energy, construction areas are open for 100% investment by Indian investors. However, there are certain sectors which has ceiling of foreign ownership, for example:

S.No.	Sectors	Maximum foreign ownership percentage	Relevant law
1.	Telecommunication	80%	Telecommunication Policy, 1999.
2.	Banking and Financial Institution	Minimum 20% and maximum 85%	Licensing Policy, 2006
3.	Aviation		Aviation Policy, 2006 Air Operator Certificate Requirement - 2012
	i. Air Operation	49% (Domestic Airlines)	
	ii. International Airlines	80% (International Airlines)	
	iii. Flying School	95% (Flying School or Training Organization)	
	iv. Maintenance	95% (Maintenance Organization)	
4.	Consultancy Business	51%	FITTA
5.	Ride Sharing Business	70%	FITTA
6.	Insurance	80% of paid-up capital	Directives on Registration of Insurer and Operation of Insurance Services 2016 (2073)
7.	Internet Service Provider	80%	Nepal Telecommunication Authority, Internet Service Provider Operation Bylaws, 2020
8.	Payment Service Providers/ Payment Service Operators	15% of paid-up capital	Licensing Policy for Payment related Institutions, 2023

8. How much time will it take for an Indian investor to obtain approval and set up business?

As per the FITTA, the statutory timeline for providing DOI approval for foreign investment is seven (7) days. However, it takes 3 to 8 weeks to obtain approval from DOI and set up business in Nepal.

In case investment by way of purchase of shares of existing company, the statutory timeline for providing approval is seven (7) days. Likewise, pursuant to the provision of NRB Bylaws, the statutory timeline for providing approval by NRB is fifteen (15) days. Therefore, the statutory timeline for

obtaining approval from both DOI and NRB is 22 days. However, it generally takes about six to eight weeks to obtain approval from DOI and NRB and complete acquisition of shares of existing company in Nepal by Indian Investors.

9. What documents are required to obtain foreign investment approval?

The following documents are required to obtain foreign investment approval from DOI and NRB:

S. No.	DOI/IBN Approval	No. of Documents	Language preference	S. No.	NRB Approval	No. of Documents	Language preference
1.	Application in standard format	1 Set (Original)	Nepali or English	1.	Application in standard format	1 Set (Original)	Nepali or English
2.	Investment Agreement i.e., Joint Venture Agreement (if there is more than one investor for setting up business) Share Purchase Agreement Share Subscription Agreement	2 Sets	Nepali or English	2.	Investment Agreement i.e., Share Purchase Agreement Share Subscription Agreement	1 Set	Nepali or English
3.	Notarized Decisions of investors stipulating intent to invest in Nepal	3 Sets (Original)	English	3.	DOI Approval for foreign investment	1 Set	Nepali or English
4.	Project Report outlining the project background, market aspects, technical aspects, financial aspects, details of sources of funds, etc.	2 Sets	Nepali or English	4.	Local Nepali company's: Company Registration Certificate Industry Registration Certificate	1 Set	Nepali
5.	Notarized registration documents: Entity Registration Certificate Memorandum of Association (MOA), Articles of Association (AOA), Tax registration, Business License (if any)	2 Sets	English	5.	Local Nepali company's Business Operating License, if any	1 Set	Nepali
6.	Corporate Profile of the Indian investor disclosing ultimate beneficiary, or Bio-data of the Indian investor with passport size photo if the investor is a natural person	3 Sets (Original)	English	6.	Local Nepali Company's: MOA AOA Tax Registration Certificate, Latest Tax Clearance Certificate	1 Set	Nepali
7.	Financial Credibility Certificate issued by a bank in India.	2 Sets (Original)	English	7.	Letter of Credit Information Bureau evidencing that the Local Nepali company is not blacklisted	1 Set (Original)	English

8.	Copy of audited financial statements of the Indian investor (if a corporate entity)	2 Sets	English	8.	Local Nepali company's decision of Board of Directors or Representative stipulating intent to obtain NRB Approval	1 Set	English
9.	Notarized copy of Passport of the director/representative of the Indian investor.	3 Sets	English	9.	Financial Due Diligence Audit and Valuation Report for non-listed Local Nepali company	1 Set	Nepali or English
10.	Notarized Power of Attorney	2 Sets	English	Applicable only for Institutional Foreign Investors			
11.	An identity card of authorized representative (liaison officer)	2 Sets	English	1.	Notarized Company Incorporation Certificate, Latest Audit Report, Details of Ultimate Beneficiary, Document disclosing source of income, and Corporate decision of the Board of Directors of Representatives stipulating intent to invest in Nepal	1 Set (Original Certified Copy)	English
12.	Timeline and work plan for injection of foreign investment (applicable for entity set-up)	2 Sets	English	Applicable only for Foreign Investor as Natural Person			
13.	Citizenship Certificate of Local Party or, Certificate of Incorporation, MOA and AOA if the Local Party is company (if foreign investor is investing in collaboration with local party of Nepal)	1 Set	English	1.	Notarized copy of Passport of the investor Document disclosing source of investment	1 Set Original Certified Copy	English

SECTOR SPECIFIC INVESTMENT

10. Can an Indian investor invest in the banking and financial sector?

Yes. However, only Indian banks and financial institutions can invest in the financial sector of Nepal. Prior approval from NRB will be necessary.

11. Can an Indian investor establish an industry in a special economic zone?

Yes. However, the following are the criteria:

- a. Special Economic Zone Regulations, 2021 specifies the industries (a) producing cigarette, cigar, bidi, chewing tobacco and tobacco products, (b) producing brandy, cider, wine, beer and alcohol, (c) producing explosives, and (d) producing arms, ammunition, gunpowder, which cannot be established in Special Economic Zones\ (“SEZ”), and

- b. At least 15% of the production must be exported for four years from commencement and, thereafter 30% of the production should be exported. Generally, most of the industries covered under the IEA are permitted to be set up in SEZs.

In addition to foreign investment approval from DOI and NRB, license from the SEZ Authority is also required to set up the industry. Dedicated chapters have been issued on Special Economic Zone under Chapter 9 and Industrial Park, Industrial Area And Industrial Districts under Chapter 10.

LOAN INVESTMENT

12. What laws regulate foreign loan in Nepal?

The primary law that regulates foreign loan in Nepal are Nepal Rastra Bank Foreign Investment and Foreign loan Management Loan Bylaws, 2021.

13. Can an Indian investor provide loan to a local company?

Yes, Indian investors can provide loan to local companies in Nepal by obtaining approval primarily from NRB. Indian investor includes Indian BFIs, Indian Company and Indian shareholders.

14. What are the regulating bodies approving foreign loan in Nepal?

The regulating bodies approving foreign loan in Nepal are NRB, DOI, IBN and Ministry of industry, commerce and supplies.

There are different categories of loan prescribed in the NRB Bylaws. In general, the approval of NRB would suffice. However, for certain kinds of loan, the approval or recommendation of other regulatory bodies may be required.

As such, if a loan is being taken by industry/company with foreign investment from Indian Shareholders for the purpose of fulfilling its objective then the recommendation from foreign investment approving body (i.e., DOI/IBN) will also be required in addition to the approval of NRB. Similarly, if loan is being taken by industry/company with foreign investment company from Indian BFIs as a project loan or project financing, approval of the Ministry of Industry, Commerce and Supplies will be required in addition to the approval of NRB.

15. Are there any criteria for a local borrower to obtain loan from an Indian investor?

Yes. They will have to demonstrate the reason for obtaining loan from foreign countries. Generally, this is done by demonstrating that the required loan could not be obtained from the local lenders in the interest rate it could obtain from foreign country.

16. Are there any restrictions to provide loan to certain kind of industries or businesses?

Yes, the loan cannot be provided to industries that are provided in the Negative List of FITTA to obtain loan from foreign source. Additionally, the purpose of the loan should not involve utilizing funds in real estate sectors such as housing and land development, or the securities market.

17. What is the interest rate and ceiling applicable to Indian loan investments?

The interest rate and ceiling depend on the nature of lender. Interest rate ceiling for different nature of lenders has been shown in table below:

S. N.	Nature of Borrower	Nature of Indian Lender	Interest Rate
1.	Firm, company, industry or institution	Indian BFIs or institutions licensed to provide loan	<p>If the loan is provided in Indian currency 1 Year Marginal Cost of funds-based Lending Rate (MCLR) +2% p.a. or latest average one year MCLR published by the Reserve Bank of India +2% p.a.</p> <p>If the loan is provided in foreign currency other than Indian currency 1 Year Benchmark Interest Rate + 6% p.a.</p>
2.	Firm, company, industry or institution	Indian companies (not licensed to provide loan)	<p>If the loan is provided in Indian currency Latest average one-year MCLR published by the Reserve Bank of India.</p> <p>If the loan is provided in foreign currency other than Indian currency 1 Year Benchmark Interest Rate + 2% p.a.</p>
3.	Industry/company	Indian Shareholders	<p>If the loan is provided in Indian currency Latest average one-year MCLR published by the Reserve Bank of India.</p> <p>If the loan is provided in foreign currency other than Indian currency 1 Year Benchmark Interest Rate + 3.5% p.a.</p>
4.	BFIs of 'A', 'B', 'C' and 'D' class and Infrastructure Development Bank	Indian BFIs	<p>If the loan is provided in Indian currency 1 Year MCLR + 0.5% p.a.</p> <p>If the loan is provided in foreign currency other than Indian currency 1 Year Benchmark + 4.5%</p>

18. Can loan be denominated Nepalese currency given?

Yes, NPR denominated loan can be given with the loan being remitted in foreign currency and the forex risk being borne by the lender. However, the maximum interest rate for such loan are:

A. Average Base Rate

The average base rate of the Nepalese commercial banks. Such rate is published by the NRB in the document titled "Current Macroeconomic and Financial Situation of Nepal". NRB publishes the average base rate of a given Nepalese month at the end of next Nepalese month.

B. Fixed Rate

The fixed rate approved by NRB at the time of approval of loan. Such fixed rate should be renewed every 10 years.

C. Additional Margin

Additional margin of 2% on the top of permitted interest rate can be imposed if the loan is provided to certain prescribed industries. Such industries include commercial agriculture, manufacturing industry, infrastructure industry, tourism industry and energy industry.

19. Can loan be provided in fixed interest rate?

Yes, loan can be given in a fixed interest rate. In relation to the NPR denominated loan, the fixed rate and renewal mechanism is as discussed above. For loans not denominated in NPR currency, the interest rate can also be a fixed interest rate. However, such fixed interest rate is effective only for 2 years and such rate should be revised in every 2 years with the prior approval of NRB. In the event the loan is provided with a fixed interest rate that does not exceed the interest rate ceiling mentioned in Q.17 above plus 25 basis points (except benchmark rate), there is no requirement of revising the interest rate.

20. What is the ceiling in the fees?

All the cost of borrowing except tax should be within the interest rate ceiling as discussed above. However, if the lender is an institution licensed to provide loan, then the lender can impose the following fees beyond the interest rate ceiling:

- i. Penal interest at maximum rate of 2% p.a. of defaulted principal and interest amount,
- ii. Prepayment fee up to a maximum of 0.25% of the prepaid amount and
- iii. Commitment fee of a lump sum up to a maximum of 0.25%.

21. What are the documents required to be attached for obtaining approval from NRB?

The following documents are required to be attached for obtaining approval from NRB:

Documents for Lender:

S. No.	List of Document
1.	Notarized copy of an agreement between lender and borrower
2.	Letter committing that the loan will be received through banking system
3.	Documents that justify the need to take loan from foreign country only, and loan utilization plan
4.	Documents that set out the basis for repayment of the loan by also considering the foreign exchange risk
5.	Loan disbursement schedule and repayment (amortization) schedule
6.	Documents of Institutional Lender a. Notarized copy of registration certificate b. Notarized documents that identify the actual owner c. Notarized copy of board resolution with regard to providing loan. d. Notarized copy of latest audit report e. Notarized copy of documents related to source of foreign loan. Documents of Natural Person Lender a. Notarized copy of passport b. Notarized copy of documents related to source of foreign loan
7.	Documents of Institutional Borrower a. Copy of registration certificate b. Copy of business operation license, if any c. Copy of permanent account number certificate d. Copy of MOA and AOA (not required if listed company) e. Copy of board resolution with regard to obtaining loan f. Copy of latest audit report (not required if listed company) g. Copy of latest tax clearance certificate/submission certificate (not required if listed company) h. Evidence of not being blacklisted by Credit Information Bureau Documents of Natural Person Borrower a. Copy of citizenship certificate b. Evidence of not being blacklisted by Credit Information Bureau

TRANSFERRING TECHNOLOGY

22. What is technology transfer?

Technology transfer means any transfer of technology between an industry registered in Nepal and the foreign investor, through an agreement. Technology transfer generally includes the following:

- a. Patent, design, trademark, goodwill, technological specialization, franchise, formula, process;
- b. User's License, know-how sharing
- c. Acquiring any foreign technical advisory, management and marketing services or technological skill or knowledge.

Generally, the means of such transfer include licensing or assignment of rights, technical and management services, etc.

23. Is there any sector in which technology transfer is not permitted?

No. Technology transfer is allowed in all the industrial sectors and there is no concept of “negative list”. Prior approval from the DOI is required for transfer of technology in the industrial sector. In the case of financial sectors like bank and insurance business, prior approval of the DOI is not required. However, prior approval from the concerned business regulator is required. For example, in case of technology transfer in a bank or financial institution, prior approval from NRB will be required.

As per the FITTA and DOI notice dated January 6, 2022, local firms/industries/companies taking services from the foreign service providers to ensure that service agreements that fall under “TTA” as provided in the FITTA get approved from DOI. TTA in general must be approved by the DOI.

24. Is there any limitation on the amount or percentage of the royalty or license fee that can be paid for the transfer of technology?

The payment of royalty and service fees arising from TTA has been capped on a per annum basis by the FITTR. The Unified Foreign Exchange Directives 2023 of NRB provides for payment of service fees to India. As per the aforementioned directives, foreign payment of royalty and license fees upto INR 3,00,000 can be made without any governmental recommendation or approval. However, payment of license fees to India exceeding INR 3,00,000 up to INR 30,00,000 can be done based on relevant regulatory body’s approval of the TTA and/or recommendation for foreign exchange facility. In case of payment above INR 30,00,000, so can be paid to India after obtaining NRB approval, in addition to relevant regulatory body’s approval of the TTA and/or recommendation for foreign exchange facility.

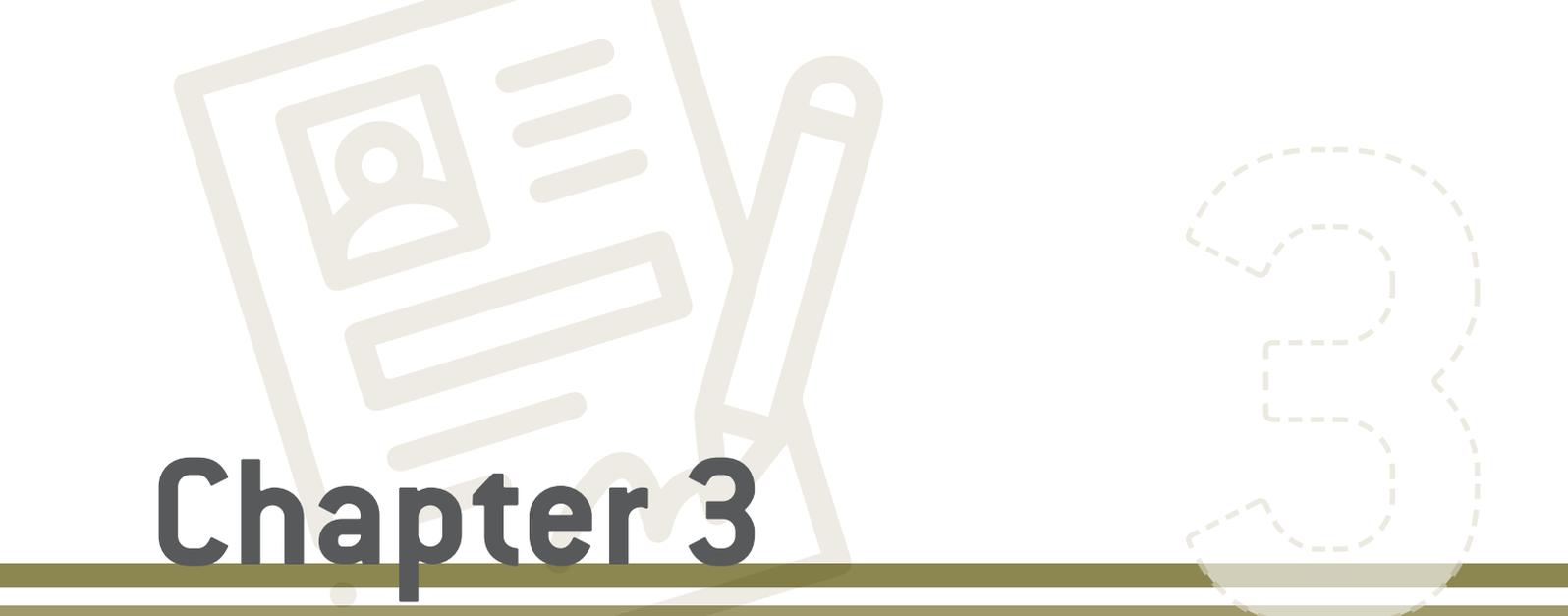
FITTR has prescribed a limit on the amount of royalty and other fees that can be repatriated in a Nepalese fiscal year as prescribed in Schedule 1 of the said regulation. The limit on royalty and other fees is tabulated below:

Limit of Royalty or other fees for all types of Technology Transfer

Royalty	Local Sales	Export Sales
Total Sales amount	Up to 5% of total sales excluding VAT	Up to 10% of total sales excluding VAT
Royalty based on net profit	Up to 15% of net profit	Up to 20% of net profit

Limit of Royalty or other fees for Trademark

Local Sales	Export Sales
Up to 2% of total Sales excluding VAT for alcohol and tobacco industry	Up to 5% of total Sales excluding VAT for alcohol and tobacco industry
Up to 3% of total sales excluding VAT for other industries	Up to 6% of total sales excluding VAT for other industries



Chapter 3

REGISTERING AND COMMENCING BUSINESS

Nepalese laws provide different business vehicles for doing business in Nepal. These business vehicles include private-firm (sole proprietorship and partnership firm), limited liability company [private company (single shareholding and multiple shareholding) or, public company (listed and unlisted)] and cooperatives. However, the most commonly used business vehicle is a private company.

Branch Office of an Indian company can also be registered to undertake business activities in Nepal. Investment made by a head office in a branch operation is not currently considered as foreign investment by the DOI. Hence, no foreign investment approval from DOI and NRB will be required. However, an agreement with the Government agency or approval from concerned government authority will be required to register a Branch Office. A general government authority has not been prescribed for granting approval for branch registration. A Branch Office can carry out only those business activities that its head office in the foreign jurisdiction carries out.

A Liaison/Contact Office can also be registered in Nepal. However, a Liaison Office cannot undertake business activities in Nepal to generate revenue.

REGISTRATION OF BUSINESS

1. What are the most common options for an Indian investor to establish a business in Nepal?

The most common options for an Indian investor to establish business in Nepal are:

- a. Establish a new company,
- b. Invest in an existing company by purchasing or subscribing shares of the company, or
- c. Register a Branch Office.

2. What is the process of registration of a company in Nepal? What are the documents required and government fee applicable?

An Indian investor can register either a joint venture company, or a fully owned subsidiary company in Nepal upon obtaining foreign investment approval. The process, requirement and government fee has been detailed below:

Registration of Company

For registration of company, the following key requirements need to be fulfilled:

- a. **Name Reservation:** The Indian investor should apply for a name reservation at the online portal of the OCR <https://application.ocr.gov.np/CRO/faces/OnlineUserLogin.jsp>.
- b. **Submission of Documents:** Once the name of the proposed local company is approved, an application for incorporation will need to be submitted electronically and physically to OCR, along with following documents:

S. No.	List of Document	No. of Documents	Language
1.	Application in prescribed format	1 set (Original)	Nepali
2.	MOA of the local company	1 set (Original)	Nepali
3.	AOA of the local company	1 set (Original)	Nepali
4.	DOI certified Investment Agreement between the shareholders (if any)	1 set	Nepali / English
5.	Copy of prior approval of foreign investment (i.e., approval from DOI)	1 Copy (Notarized)	Nepali
6.	Copy of certificate of registration and other registration document of Indian investor (MOA, AOA, By-laws), if Indian investor is a corporate entity	1 Copy (Notarized)	Nepali / English
7.	Copy of passport of Indian investor or representative of Indian investor	1 Copy (Notarized)	Nepali / English
8.	Corporate resolution of Indian investor regarding incorporation of local company (if Indian investor is a corporate entity)	1 Copy (Notarized)	Nepali / English

- c. **Government Fee:** The fees for registering a local company are set out below:

Registration Fee for Private Company		Registration Fee for Public Company	
Authorized Capital (NPR)	Fee (NPR)	Authorized Capital (NPR)	Fee (NPR)
Up to 0.1 million	1,000/-	For 10 million	15,000/-
0.1 million to 0.5 million	4,500/-	More than 10 million up to 100 million	40,000/-
0.5 million to 2.5 million	9,500/-	More than 100 million up to 200 million	70,000/-
2.5 million up to 10 million	16,000/-	More than 200 million up to 300 million	100,000/-
More than 10 million up to 20 million	19,000/-	More than 300 million up to 400 million	130,000/-
More than 20 million up to 30 million	22,000/-	More than 400 million up to 500 million	160,000/-
More than 30 million up to 40 million	25,000/-	More than 500 million	3000/- for every additional 10 million exceeding NPR 500 million
More than 40 million up to 50 million	28,000/-		
More than 50 million up to 60 million	31,000/-		
More than 60 million upto 70 million	34,000/-		
More than 70 million upto 80 million	37,000/-		
More than 80 million upto 90 million	40,000/-		

More than 90 million upto 100 million	43,000/-		
More than 100 million	30/- for every additional 0.1 million exceeding 100 million		

d. Timeline: It generally takes about 3 to 10 days.

Registration of Business with Local Ward Office

Every company is required to register their business in concerned local ward office to obtain Business Registration Certificate. It generally takes around 1-2 days. The following documents need to be submitted to the concerned local body for the registration of business:

S. No.	List of Document	No. of Documents	Language
1.	Standard application prescribed by concerned local body	1 Set (Original)	Nepali
2.	Copy of board resolution in relation to business registration	1 Set	Nepali
3.	Copy of power of attorney	2 Sets	Nepali
4.	Copy of House rent/lease agreement	1 Set (Notarized)	Nepali
5.	Copy of citizenship of landowner (in case lessor is natural person); company registration certificate, MOA, AOA and PAN certificate (in case landowner is Company)	2 Sets	Nepali
6.	Copy of landownership certificate/electricity bill/telephone bill of landowner	1 Set (Original)	Nepali
7.	Hand sketched location map of registered office	5 Set and 1 Set	Nepali
8.	Photographs of managing/executive director/representative signing the application	2 copies	
9.	Copy of MOA, AOA, PAN Registration Certificate, copy of passport of directors, an identity card of authorized representative (liaison officer), company seal	1 set	Nepali/English

Tax Registration

Every company is required to register for tax with the IRD to obtain Permanent Account Number (PAN). It generally takes around 1-2 days. The following documents need to be submitted to the IRD for tax registration:

S. No.	List of Document	No. of Documents	Language
1.	Application form in the standard format	1 Set (Original)	Nepali
2.	Registration Certificate, MOA, AOA of the local company	1 Set	Nepali
3.	Corporate Resolution of the local company to register for PAN	2 Sets	Nepali
4.	Copy of prior approval of foreign investment (i.e., approval from DOI/IBN)	1 Set (Notarized)	Nepali
5.	Copy of House or Premise Rent Agreement or land ownership document of the registered office/ industrial establishment of the Company.	2 Sets	Nepali
6.	Map of Business Location	1 Set (Original)	Nepali
7.	Photograph and passport of authorized representative	5 Set and 1 Set	Nepali

Industry Registration

The local company also has to be registered as an industry with the DOI. It generally takes around 7-15 days. Following documents need to be submitted for industry registration along with the government fee of NPR 100:

S. No.	List of Document	No. of Documents	Language
	Application for the registration of the industry in the standard format	1 Set (Original)	Nepali
	Copy of prior approval of foreign investment (i.e., approval from DOI/IBN)	1 Set (Original)	Nepali
	Copy of certificate of registration and MOA and AOA of the local company	1 Set	Nepali
	Corporate resolution of the local company to register the company as an industry	1 Set	Nepali
	Project proposal	1 Set	English
	Tax registration certificate, business registration certificate	1 Set	Nepali
	Notarized copy of passport of directors	1 Set	English
	Recommendation letter to establish industry issued by local government authority	1 Set	Nepali/English
	Hand sketched location map of registered industry	1 Set	Nepali/English
	Copy of house rent/lease agreement	1 Set	Nepali/English
	An identity card of authorized representative, if any	1 Set	Nepali/English

Once the process of tax and industry registration is completed, the local company has to apply for NRB Approval/Notification as discussed in Chapter 2. After NRB notification is made or NRB approval is obtained, the Indian investor can transfer funds through proper banking channels to the local company. After the money is received by the local company, the money has to be capitalized and the shareholder register of the local company has to be recorded and certified at the OCR. However, in the case of investment in an existing company, change in shareholding has to be recorded and certified at the OCR. Certification of share register reflects the capitalization of the foreign investment.

3. What is the process of registering a Branch office in Nepal? What are the documents required and government fees applicable?

Indian companies can also register a Branch Office without incorporating a company or making investment in existing company. The branch registered in Nepal can carry out such business activities that the Indian company can carry out in the country of its incorporation. The process, requirement and government fee has been detailed below:

Submission of Documents: An application for registering a branch will need to be submitted electronically and physically to the OCR along with the following documents:

S. No.	List of Document	No. of Documents
1.	Approval obtained from the competent authority by the Indian company to carry on its business or transaction in Nepal, or agreement with the competent authority	1 Set (Original)
2.	Copy of the memorandum, articles of association and certificate of incorporation of the foreign company and its Nepali translation	2 Sets (Notarized)
3.	Full name, address of the main (head) office of the Indian company, principal place of transaction, date of incorporation, paid up capital and details of main objectives of the Indian company	1 Set (Notarized)
4.	The details of the citizenship, name and address of directors, manager, company secretary or chief officer of the Indian company	1 Set (Notarized)
5.	Name and address of the person located or residing within Nepal authorized by the Indian company to receive, on behalf of the foreign company, the notice, summons etc., issued in the name of the Indian company	1 Set (Notarized)
6.	The principal place within Nepal where the Indian company is to operate its branch office and the full address of the office of the Company located at such place	1 Set (Notarized)
7.	Details of the proposed investment and transaction if the company is to carry out any transaction or business	-
8.	The proposed date of commencement of business.	1 Set (Notarized)

9.	Declaration from the director/s or his/their representative on behalf of the Indian company that the particulars submitted by the Indian company are true	1 Set (Notarized)
10.	Board Resolution of the Indian company	1 Set (Notarized)

a. **Government Fee:** The fees for registering a branch office are set out in the table below:

Proposed Investment (NPR)	Fee (NPR)
Up to 10 million	15,000/-
More than 10 million up to 100 million	40,000/-
More than 100 million up to 200 million	70,000/-
More than 200 million up to 300 million	1,00,000/-
More than 300 million up to 400 million	1,30,000/-
More than 400 million up to 500 million	1,60,000/-
More than 500 million	3,000/- for every additional 10 million exceeding 500 million
If proposed investment is not clear	1,00,000/-

b. **Timeline:** It generally takes around 10 days.

Once a Branch Office is registered, it also has to be registered at IRD for tax purpose.

4. What is the difference between a company and branch office?

The key differences between a company and Branch Office are as follows:

Category	Company	Branch Office
Requirement of regulatory approval for establishment	FDI approval from DOI /IBN and NRB.	Agreement with GON or approval from competent authority for registration of branch office. In present context DOI has not been granting approval for set up branch office in Nepal.
Legal Regulation	Governed primarily by FITTA, FERA and Companies Act	Governed primarily by the Companies Act and NRB Bylaws
Minimum Foreign Investment requirement	The Government of Nepal through a notice published on 14 November 2022, under the FITTA requires each foreign investor to invest at least NPR 20 million in every industry they invest in.	Unclear as to whether the minimum foreign investment threshold of NPR 20 million is applicable to a Branch Office. In practice, OCR is registering branch office below investment threshold of NPR 20 million.
Operating Expenses Applicability	The local Company may use its share capital injection amount (and the arising profits) to mete out operating expenses.	The Branch Office may bring amount for operations and maintenance as well as for conducting related business transactions.
Foreign Investment Injection Timeline	Within one year of the date of receiving Foreign Investment Approval as follows For investment approval of NPR 50 million - 25% For investment approval of NPR 50 to 250 million - 15% For investment approval of NPR 250 million to 1 billion - 10% Above NPR 1 billion - 5%. Further, before commencing commercial operation the Indian Investor is required to inject at least 70% of the approved investment amount, the remaining 30% within 2 years after the commencement of commercial operations.	Unclear whether the foreign investment timeline prescribed by the FITTA would be applicable to Branch Office. Practically, the timeline of investment provided in FITTA is not applicable for Branch Office.

Minimum and maximum ownership	Minimum number of shareholders is 1 whereas maximum is 101 for private limited companies. Some sectoral laws limit foreign shareholding ratio/percentage in sector specific companies as banks and financial institutions, telecommunications.	No concept of share capital structure in branch offices.														
OCR Registration Applicability	Register with the OCR as a private limited company.	Register with the OCR as branch of foreign company as well.														
Industry Registration Applicability	Register an industry under the IEA.	Register an industry under the IEA.														
Right to Repatriation	Guaranteed specifically by FITTA, FERA and NRB Bylaws.	NRB Bylaws permits it.														
Separate legal entity	Yes.	No.														
Category	Company	Branch Office														
Ability to own land and building	Yes.	Not clear.														
Liability	Limited liability of the shareholders. The liability of the shareholders will be limited to its amount of investment made in Nepal.	Unlimited. If the assets of the branch office are not sufficient to settle all its liabilities in Nepal, then its head office will need to bear the liability.														
Capacity to file a lawsuit	Yes.	Yes.														
Compliance requirement	More as compared to the Branch Office.	Less as compared to a company.														
Tax	<p>The income of Company or a Branch Office will be subjected to general corporate tax of twenty-five percent (25%) or income tax rate for specific business under Schedule 1 of the ITA.</p> <p>Other withholding taxes applicable to the Company are as follows:</p> <table border="1"> <thead> <tr> <th>Income Head</th> <th>Rate of TDS</th> </tr> </thead> <tbody> <tr> <td>Service Charge/ Fees</td> <td>15%</td> </tr> <tr> <td>Service Charge/ Fees for Companies registered in VAT are subject to TDS</td> <td>1.5%</td> </tr> <tr> <td>Payment of Interest</td> <td>15%</td> </tr> <tr> <td>Royalties</td> <td>15%</td> </tr> <tr> <td>Dividends</td> <td>5%</td> </tr> <tr> <td>Repatriation of income by FDI Company / Permanent Establishment</td> <td>5%</td> </tr> </tbody> </table>		Income Head	Rate of TDS	Service Charge/ Fees	15%	Service Charge/ Fees for Companies registered in VAT are subject to TDS	1.5%	Payment of Interest	15%	Royalties	15%	Dividends	5%	Repatriation of income by FDI Company / Permanent Establishment	5%
Income Head	Rate of TDS															
Service Charge/ Fees	15%															
Service Charge/ Fees for Companies registered in VAT are subject to TDS	1.5%															
Payment of Interest	15%															
Royalties	15%															
Dividends	5%															
Repatriation of income by FDI Company / Permanent Establishment	5%															

5. If Indian investor intends to bid and undertake projects in the host country, do they have to register a business entity?

No, Indian investors are not required to register a business entity in order to bid for a project. However, once such Indian investor wins the bidding process, it would have to incorporate an entity or register a Branch Office in Nepal to undertake the project.

6. How can a bank account be opened?

Indian investors are required to transfer their investment amount to the bank account of the local company. In order for the local company to open a bank account, a decision of the Board of Directors, along with signatories, will need to be submitted along with other documents such as certificate of registration of company, MOA, AOA, PAN certificate etc.

7. Is there a requirement to obtain license by the local company?

A private company can commence its business once it is registered. Only certain types of businesses require a business-specific license. For example, energy, telecommunication services, banking, insurance, travel etc. require license from the specified government agency or regulator. In addition to applicable licenses, a public limited company is required to obtain a certification of commencement of business from the OCR before starting the business.

Sector	License Authority
Hydropower	Department of Electricity Development and Investment Board Nepal
Banking and Financial Institutions	Nepal Rastra Bank
Information and Communication Technology	Nepal Telecommunication Authority
Transport	Department of Roads
Education	Department of Education
Health Care	Department of Health Services
Agriculture	Department of Agriculture
Tourism	Department of Tourism
Mines and Minerals	Department of Mines and Geology
Insurance	Nepal Insurance Authority

ENVIRONMENTAL CLEARANCE

8. Is environmental clearance compulsory for all industries?

No. Only those industries which intend to operate industries or carry businesses (projects) that may alter/change the existing environmental condition will have to obtain environmental clearance.

There are three types of environment studies:

- Summary Environmental Study (“SES”),
- Initial Environmental Examination (the “IEE”), and
- Environment Impact Assessment (“EIA”).

The Environmental Protection Rules, 2020 (2078) (“EPR”) has listed the projects which are required to conduct either of the three environmental studies - SES, IEE, or EIA - under Schedule 1, 2 and 3 respectively based on the scale or magnitude of projects. The complexity of the report increases from the SES to the EIA.

Around 11-12 sector-specific projects have been identified under Schedule 1, 2 and 3 of the EPR. These cover projects in sectors of (i) forest, (ii) health, (iii) education, (iv) tourism, (v) transportation, (vi) energy, water resources and irrigation, (vii) drinking water, (viii) apartment, buildings and residential development and urban development, (ix) waste management, (x) industry, (xi) mining, and (xii) agriculture.

Types of Environment Studies	Need for different types of Environment Studies
Summary Environmental Study	Generally, SESs are conducted in projects such as business of hospitals, nursing home or medical business with 16 to 25 beds, construction, establishment and operation of hotel or resort with 25 to 50 beds, electricity transmission projects up to 66 KV capacity, which use forest areas, among others. Agriculture sector projects are not required to conduct SES but are required to conduct either an IEA or EIA as mentioned under Schedule 2 or Schedule 3 respectively.

Initial Environmental Examination	Likewise, projects such as business of hospitals, nursing home or medical business with 25 to 100 beds, construction, establishment, and operation of hotel or resort with 51 to 100 beds, electricity production projects up to 1 to 50 MW capacity, among others, are required to conduct IEE.
Environment Impact Assessment	Further, projects such as business of hospitals, nursing home or medical business with more than 100 beds, construction, establishment, and operation of hotel or resort with more than 100 beds, electricity production projects that is larger than 50 MW capacity, among others, are required to conduct EIA.

9. What is the process of conducting SES, IEE or EIA?

The Environmental Protection Act, 2019 (2076) (“EPA”) and the EPR envisages that the SES, IEE or EIA need to be conducted in two phases:

Phase 1: Preparation of and seeking approval of Scope Determination Report and Work Schedule prior to conducting the Environmental Study Report. For projects which require conducting the SES or the IEE, only a Work Schedule suffices. A Scope Determination Report will be necessary for those projects which require an EIA, in addition to the Work Schedule.

Phase 2: After Phase 1, the proponent has to conduct a Public Hearing and carry out either SES, IEE or EIA.

A recommendation letter from - (i) local level and (ii) concerned office governing the subject-matter - also needs to be submitted when submitting the Environmental Study Report with the approving bodies. However, an SES will not require the approval of the concerned office governing the subject-matter. For this an application will have to be submitted to the aforementioned two bodies.

10. Who are the approving bodies for the Scope Determination Report, Work Schedule and relevant Environmental Study Report?

The approving bodies for all relevant submissions are based on the type of projects as provided under the EPR:

Type of Project	Authority of Submission
Projects under Section 3(2)(a) of the EPA which include development projects falling under National Priority, projects whose investment has been approved by the Investment Board of Nepal, development activities falling under federal jurisdiction according to the prevailing law, projects which involve construction activities in one or more than one province or any project specified by GON.	Concerned Ministry of Government of Nepal
Projects under Section 3(2)(b) of the EPA which include development activities or projects falling under the jurisdiction of the provincial government.	Body prescribed by the Provincial Law
Projects under Section 3(2)(c) of the EPA which include development activities or projects falling under the jurisdiction of local level.	For EIA projects: Body prescribed by the Provincial Law For SES or IEE projects: Body prescribed by Local Law (Only Work Schedule, SES & IEE).

For projects which have multiple objectives with more than one Ministry of the Government of Nepal or is related with more than one body, the proponent may prepare a unified Environmental Study Report along with the recommendation of the concerned stakeholder Ministries or bodies as well.

11. What are the compliances to be followed to prepare a Scope Determination Report and Work Schedule?

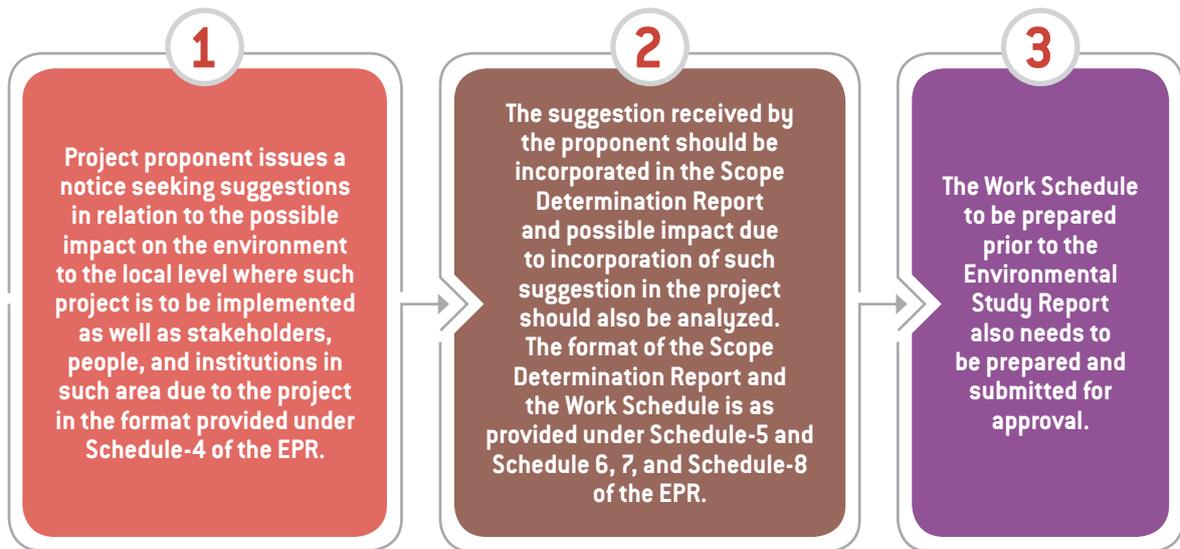


Figure: Compliances in relation to Scope Determination Report and Work Schedule

12. What are the compliances to be followed for the Environmental Study Report?

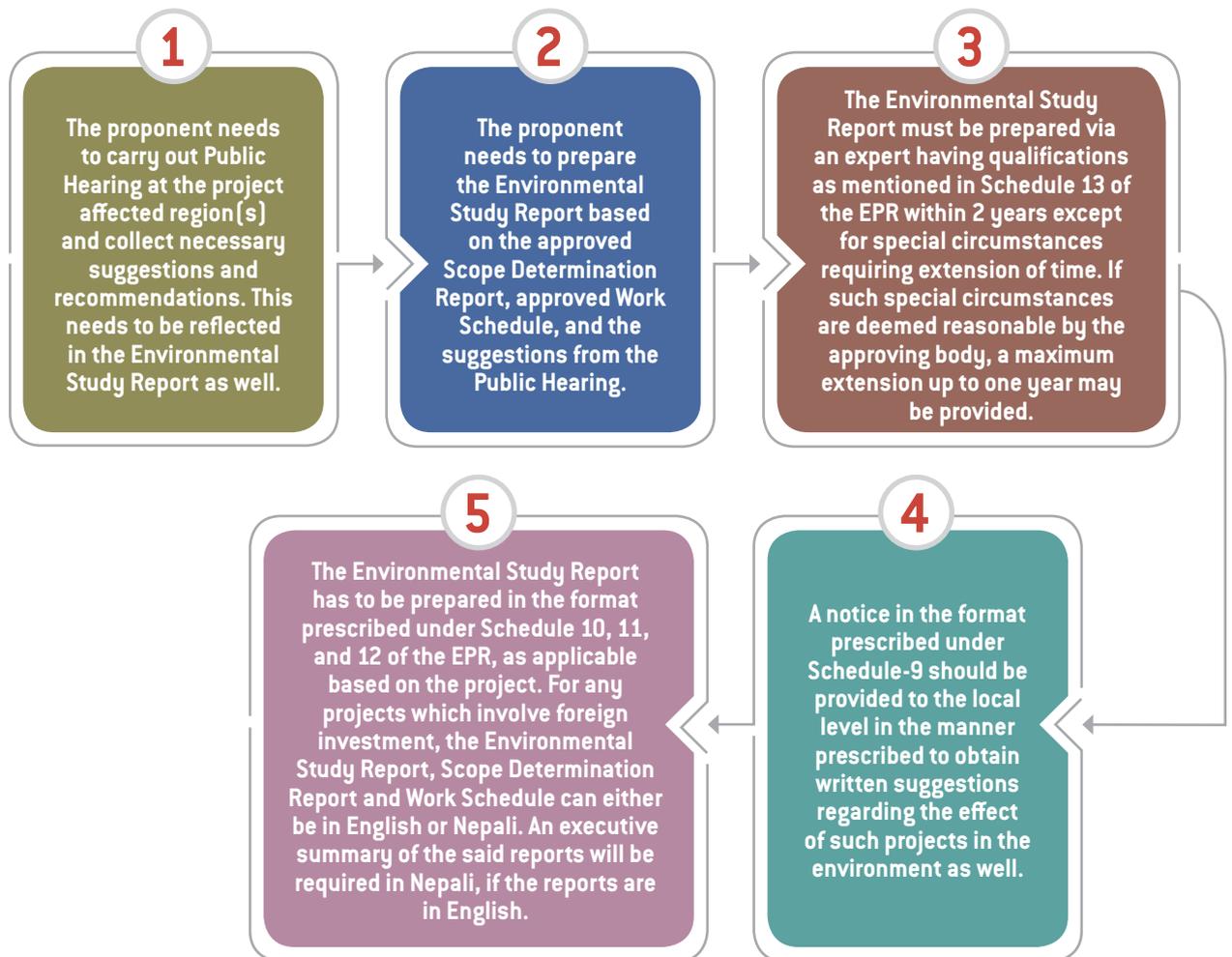


Figure: Compliances to be followed for the Environmental Study Report

13. When will a Supplementary Environmental Study Report be needed?

Any projects for which an Environmental Study Report has already been approved and which requires adjustment to its physical infrastructure, design or structure, transfer or alteration of structure, increment of forest area, or increment of the capacity of the project, will require preparation of a Supplementary Environmental Study Report. However, if it is deemed that a Supplementary Environment Study will not be required or if the capacity of the project is decreased or the number of trees to be cut down has also decreased, then instead of a Supplementary Environment Study Report, the environment management plans under the existing approved Environmental Study Report may be adjusted upon the consent of the concerned body.

This is done to ascertain whether or not the adjustments, alterations, or increments will negatively affect the environment and whether or not such negative affects can be mitigated or minimized.

This will require an application to be provided to the concerned body disclosing in a comparative tabular form, the reasons for alterations of various dimensions of the project and analysis of the environmental effects because of such alterations, along with necessary documents to confirm such details. Upon such application, an approval to conduct such Supplementary Environmental Study may be given by the concerned body if it deems the details reasonable upon necessary inquiries.

The concerned body may also itself order the proponent to submit a Supplementary Environmental Study Report as well.

The process of carrying out Supplementary Environmental Study Report will be similar to conducting the Environmental Study Report. The process of Scope Determination Report and Work Schedule is not required to be complied during the preparation of Supplementary Environmental Study Report.

14. Once the Environmental Study Report is approved, can the project be commenced at any time?

The EPR mandates that the concerned project needs to be commenced within three years of the approval of the Environmental Study Report, subject to the concerned body's permission to grant extension up to a maximum period of two year under special circumstances.

In the event that the project is not commenced within the specified duration, the environmental study for the project will have to be carried out again and the report submitted.



Chapter 4

PROPERTY LAWS

OWNING OR LEASING IMMOVABLE PROPERTY

1. What are the types of lands in Nepal?

Nepal has the following types of land ownership: (i) private land, (ii) trust land, (iii) government land.

Private land is locally known as ‘Raikar’ land over which a private person has ownership. Land ownership certificates are issued to the individual or the company owning the land. Any land that is owned by a company registered in Nepal with foreign investment thus falls under this category.

Trust land, locally known as ‘Guthi’ land, is land held under a trust that is endowed by any philanthropist through relinquishment of their title to the immovable property to fund a trust for the operation of any social or religious cause.

Government land mainly comprises of roads, paths, but also railways, forests, shrub lands, jungles, rivers, streams and marshlands that do not belong to anyone. Furthermore, lakes, ponds and their banks, canals and channels, waste and uncultivated land, land located on sharp hillsides, paths and sand that is vacated by river, which are owned by the GON or declared as public land by the GON are also considered as Government land.

2. Are Indian investors allowed to own immovable property in Nepal?

Indian investors cannot directly own land in Nepal without the prior approval of the Government of Nepal (Council of Ministers). Further, a company registered in Nepal by an Indian investor is considered as a local company and thus can own land. Unlike the approval required for an Indian Investor, such company does not require approval of the Council of Ministers to own land in Nepal.

FITTA prohibits foreign investment in real estate business. Hence, investment is not allowed in real estate business, such as buying and selling of land in Nepal. Nevertheless, Indian investors can invest in the housing business. The housing business is considered as separate from real estate in Nepal, as this includes activities such as construction of housing units/complexes.

3. Are Indian investors allowed to lease immovable property in Nepal?

As opposed to renting, the leasing of land is governed separately by Nepali law. Indian investors can take rent of house in their individual capacity but are restricted from leasing land for the purpose

of developing or constructing buildings, or for agricultural purposes. In this context, Indian investors in their individual capacity can enter into house rent agreements, but cannot lease land in order to develop and derive benefit and profit there from.

The legal regime of Nepal allows Indian nationals to enter into house rent agreements and considers passports as identification from which the ability of the individual to enter into contract is derived. However, leasing of land is restricted to individuals who do not have the capacity to buy land in Nepal; thus restricting land lease in individual capacity. Companies with Indian investment are however exempt from this restriction as they are treated as local companies.

4. Are branch offices allowed to own real estate in Nepal?

The law is not clear as to whether branch offices of the Indian companies can own real estate property in Nepal.

5. Has Nepal implemented any land zoning laws?

The Land Usage Act, 2019 (2076) has envisaged categorization of land into following: (a) agricultural, (b) residential, (c) commercial, (d) industrial, (e) mines and minerals, (f) forests, (g) rivers, streams, lakes, wetlands, (h) public utilities, (i) cultural and archeological importance, and (j) other land as specified by the Government of Nepal.

If the land is to be used for purposes other than as categorized, the final decision in relation to the same is taken by the Federal Land Usage Council. For example: if a commercially used land is categorized as the agricultural land, an application can be filed to the Local Land Usage Council. The Local Land Usage Council then writes to the Province Land Usage Council if the land should be categorized as per such application. Similarly, if the Province Land Usage Council also finds that the land should be re-categorized as per the application, it will recommend the same to the Federal Land Usage Council, which will take the final decision on the same.

6. Is there a ceiling on land ownership?

Yes. Land ceilings are imposed depending on where the land is situated. Such a land ceiling is applicable to all industries, irrespective of whether such industries have foreign investment or not. The existing land ceiling is as follows:

S.No.	Geographic region	Land ceiling
1.	Terai region	10 Bigha [6.77 hectares]
2.	Kathmandu valley	25 Ropani [1.27 hectares]
3.	All hill areas other than Kathmandu valley	70 Ropani [3.56 hectares]

If land is required beyond the ceiling, the company is required to take specific approval from the Ministry of Land Management, Cooperative and Poverty Alleviation (“MOL”) or the Council of Ministers.

According to Order Relating to Exemption of Land Ceiling, 2021 (2078), certain manufacturing, energy, farming, tourism, service and construction companies may apply and be approved for additional land. The MOL approves additional land area above the prescribed ceiling. If the additional land required exceeds the additional specified limit or the unprescribed industry requires land beyond the ceiling, approval from the Council of Ministers is required to own the excess land.

PROVIDING SECURITY AGAINST LOANS

7. What property can be provided as security against loans?

The matters related to the creation and enforcement of the security interests in favor of lenders are primarily governed by the Country Civil Code, 2017 (2074) (“Civil Code”), Secured Transaction Act,

2006 (2063) and the Finance Act of the relevant local level authority. Generally, there is no restriction on the type of property, whether moveable or immovable, that can be provided as security against loans. Security interest may be created on fixed assets, current assets, tangible and intangible assets.

8. Is it permissible for a local company to create security interest in favor of a foreigner?

Yes, security interest can be created on immovable property in favor of a foreigner with prior approval of the GON. Currently, such approval is granted by the GON in the form of decision of the Council of Ministers. Similarly, a prior approval from NRB is required to pledge shares and give security over offshore accounts in favor of the foreigner. Though not required by law, in practice, prior approval from DOI and NRB are obtained for creating security interest in favor of the foreigner as part of the approval of the foreign investment. For providing security interest in all kinds of assets, the approval of NRB is required.

9. Can security interests be created over land?

Yes. However, prior approval from the GON is required for the creation of security interests on land and fixed assets in favor of the foreigners. In case of company having land beyond the prescribed ceiling as mentioned above, they can mortgage up to 50% of such land for the purpose of expanding infrastructure or purchasing or building machines to increase the production or productivity of the industry, as per Industrial Enterprise Act, 2020 (2076). No such limitation is applicable in case of project financing. However, the Order Relating to Exemption of Land Ceiling, 2017 (2074) provides contrary provision to the said provisions. As per the said Order, the land beyond the prescribed ceiling cannot be given as security to the lender.

10. Can security interests be created over movable assets?

Yes. Any person may have their security over such moveable and intangible assets. Intangible property is classified as movable property other than goods, accounts, secured sales contract, deeds, instruments and cash, which create legal rights. Movable property is to be understood as follows:

- a. Cash or cash equivalents or foreign currency,
- b. Gold, silver, stones, jewelry made of gold, silver or other valuable stones,
- c. Goods other than (a) and (b) above, that can be displaced from one place to another,
- d. Bonds, securities, declaration, letter of credit or other negotiable instruments or benefits derived from it,
- e. Intellectual property,
- f. Security interest,
- g. Goodwill or franchise,
- h. All property other than immovable property.

A security interest is attached to a moveable and intangible asset when

- i. a security agreement is concluded in writing,
- ii. the value against the security is provided by the secured party (for example loan should be provided under the loan agreement) and
- iii. the person giving the security has ownership over the security and has the power to grant it to the security holder.

Chapter 5

SECURING INTELLECTUAL PROPERTY RIGHTS

1. What is the law that governs Intellectual Property?

Currently, Nepal only recognizes Industrial property (patent, design and trademark) and Copyright. The major law that governs the protection and enforcement of industrial property in Nepal is the Patent Design and Trademark Act, 1965 (2022) (“PDTA”). The regulatory body under the PDTA is Department of Industry (“DOI”), a quasi-judicial body that oversees litigation matters as well as administrative matters related to industrial property.

The major law that governs the protection and enforcement of copyrights in Nepal is the Copyright Act, 2002 (2059) (“Copyright Act”). It is supplemented by the Copyright Rules, 2004(2061). The regulatory authority under the Copyright Act is the Nepal Copyright Registrar’s Office (“NCRO”) for administrative functions and the District Court for judicial functions. Copyright cases are state party cases, thus are initiated through a First Information Report (“FIR”) before the relevant Police office.

Nepal is also a signatory to multiple major international treaties for protection of intellectual property, like the Paris Convention for Protection of Industrial Property, 1883 (“Paris Convention”), Trade Related Aspects of Intellectual Property Rights, 1994 (“TRIPS Agreement”), Convention Establishing World Intellectual Property Organization, 1967 (“WIPO Convention”), Berne Convention for the Protection of Literary and Artistic Works, 1886 (“Berne Convention”).

A Bill made to Amend and Unify Prevailing Laws relating to Intellectual Property, 2019 (2076) (“IP Bill”) has been drafted and is waiting for legislative discussion and approval. This new law is made to bring Nepal’s laws into compliance with global legal standards. The proposed legislation, which seeks to codify all intellectual property laws (especially industrial property) under a single law, seeks to make significant improvements to existing intellectual property law of Nepal.

2. What are the forms of intellectual property that are protected in Nepal?

The forms of intellectual property that are protected by the laws of Nepal are:

- a. Copyright and the related rights: grants authors, artists and other creators protection for their literary and artistic creations, generally referred to as works.
- b. Trademark: a word, or symbol, or picture or a combination thereof to be used by any firm, company or individual in its products or services to distinguish them with the product or services of others.

- c. Patent: a useful invention relating to a new method or process of manufacture, operation or transmission of any material or a combination of materials, or that is based on a new theory or formula.
- d. Industrial Design: a form or shape of any material manufactured in any manner that a manufacturing company or producer uses for its products.

3. How can a patent be protected in Nepal?

The procedure for a patent to be registered in Nepal begins by submitting an application to the DOI. The particulars that are to be submitted along with the application including but not limited to are as follows:

- Name, address and occupation of the inventor,
- If the applicant is not the inventor, document proving acquisition of title from the inventor,
- Process of manufacturing, operating or using the patent,
- Theory or formula on which the patent is based,
- Map and drawings along with particulars of the patent.

The DOI, upon receiving such application conducts a formalities examination to determine whether the application conforms with the necessary procedural and formal requirements. After completion of the formalities examination, the DOI then proceeds to conduct a substantive examination wherein they check whether the invention is novel, involves inventive step and has industrial applicability.

It then decides if the patent shall be registered and published. The time-period from filing to registration of patent is approximately 2 (two) years. A registered patent may be cancelled by DOI if it is found that;

- (a) the patent is already registered in the name of any other person,
- (b) if the applicant is neither the inventor and nor has acquired rights over the patent from the original inventor,
- (c) if the patent is likely to cause adverse effect on the public health, conduct or morality or the national interest or,
- (d) if the registration of patent contradicts with the prevailing laws of Nepal.

However, the DOI, before cancelling the registration of the patent, provides an opportunity to the patent owner to show reasons as to why the patent should not be cancelled.

In case a third party has objection to the registered patent once published, it shall file a complaint before the DOI within 35 (thirty-five) days from the date of seeing or copying the patent information from DOI after publication in Nepal Gazette.

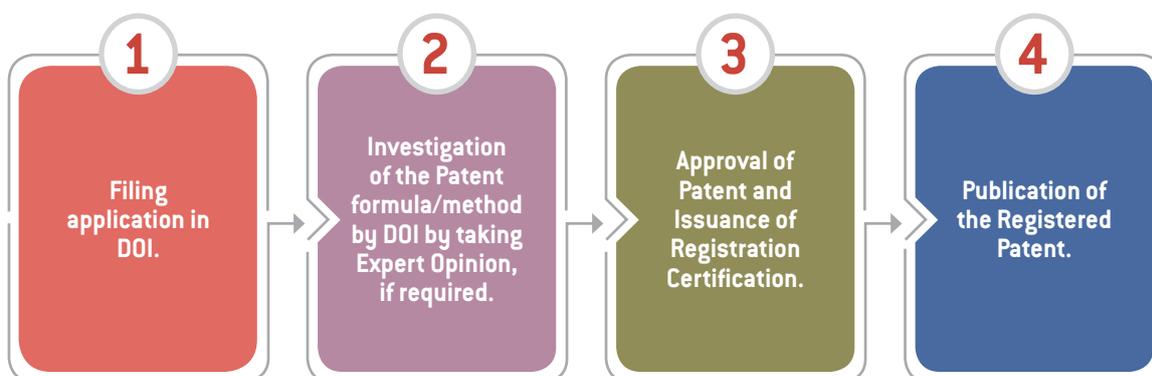


Figure: Procedure for Registration of Patent

4. What is the term of protection of patent?

A patent is protected for 7 (seven) years when registered at the DOI. Further, the patent owner may renew the patent twice, for a period of 7 (seven) years at a time. After expiration, the patent may be renewed within 35 (thirty-five) days of such expiration.

5. How can industrial design be protected in Nepal?

The procedure to register industrial design begins by submitting an application for registration of the industrial design, along with four copies of the industrial design of the article manufactured or the product to be manufactured. The DOI on receiving the industrial design of the article shall examine the industrial design and check its eligibility for registration. If the industrial design of the article is not already protected in the name of another or does not hurt the prestige of any individual or institution or adversely affects the public conduct or morality, or undermines the national interest, DOI will issue a certificate for industrial design registration and publish the same in the Industrial Property Bulletin for information to the public. DOI may also cancel a registered industrial design if the aforementioned conditions are met. However, it shall first give the industrial design holder an opportunity to show cause before cancelling the registration of industrial design.

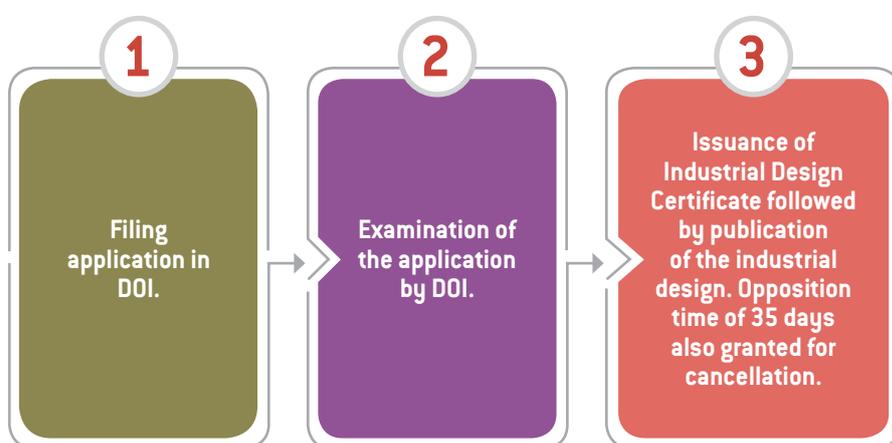


Figure : Procedure for Registration of Design

6. What is the term of protection of industrial design?

The term of industrial design is for a period of 5 (five) years, which is further subject to renewal twice for a period of 5 (five) years at a time and shall be applied for renewal within 35 (thirty-five) days of such expiration.

7. What is the procedure for filing a trademark?

The procedure of trademark registration begins by submitting an application for trademark registration at the DOI. The DOI upon receiving such application makes a preliminary and then substantial examination of the application including computer search to validate whether the proposed trademark could be registered or not pursuant to prevailing laws. The DOI then publishes the details of the proposed trademark in the Industrial Property Bulletin to collect any opposition against the applied trademark. If no opposition is filed, the proposed trademark will be registered, and a certificate of registration is issued. In case any opposition is filed, the registration of the disputed trademark will depend on the decision of the DOI, which is appealable in the High Court.

Since Nepal is a party to the Paris Convention and TRIPS Agreement, trademarks already registered in foreign countries can be registered in Nepal, but these trademarks are not protected independently. For protection of foreign trademark, it is required to be registered in Nepal.

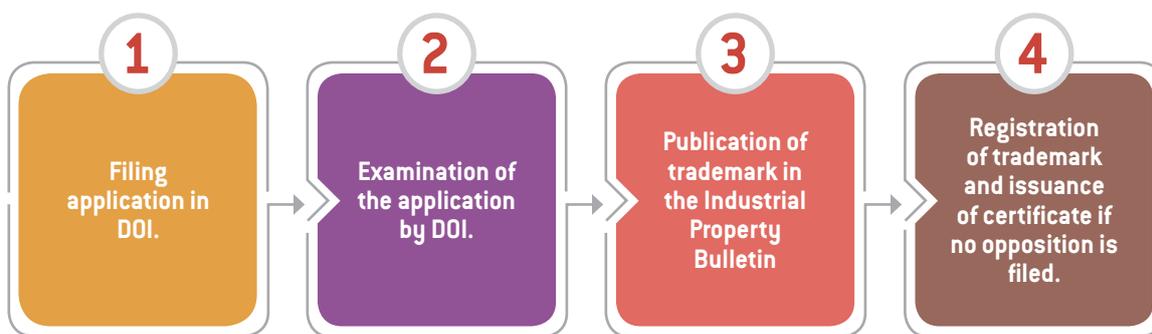


Figure: Procedure for Registration of Trademark

Additionally, pursuant to Foreign Investment and Technology Transfer Act, 2019 (2075) (“FITTA”), the use of foreign trademark by local entity comes under the ambit of Technology Transfer. The FITTA states that approval of the DOI is required for technology transfer. In view of this provision, the permission for technology transfer has to be taken from the DOI for licensing of foreign trademark.

8. What is the timeline for registration of trademark?

The general time period required to register a trademark is about 12-16 months from the date of filing of application for the trademark. However, the timeline might extend if the trademark is opposed.

9. What is the term of protection of trademark?

The term of trademark is for a period of 7 (seven) years, which is further subject to renewal indefinitely for a period of 7 (seven) years at a time and can be applied for renewal within 35 (thirty-five) days of expiry of the trademark which can be further extended by 6 months by paying late fees.

10. How can a copyright be protected in Nepal?

In Nepal, copyright registration is not mandatory, and copyright protection comes automatically with the creation under Copyright Act, 2002 (2059). However, copyright registration will protect against possible infringements of copyright. The protectable subject matter of copyright includes literary, artistic, dramatic and musical work. The non-protectable subject matter of copyright includes religion, news, method of operation, concept, principle, court judgement, administrative decision, folksong, folktale, proverb, and general data.

The procedure for registration of copyright begins by submitting an application with all evidence to NCRO according to Copyright Rules, 2004 (2061). The Registrar shall examine the application to determine the originality and fixation of work. Upon such examination, if it is found that all requirements are fulfilled, a certificate is issued within 35 (thirty-five) days by taking a charge of NPR 100 (one hundred) from the date of application as per Copyright Rules, 2004. However, if upon examination, it is found that the document given to the office is not copyrightable, the office is required to give the applicant a justification within 7 (seven) days.

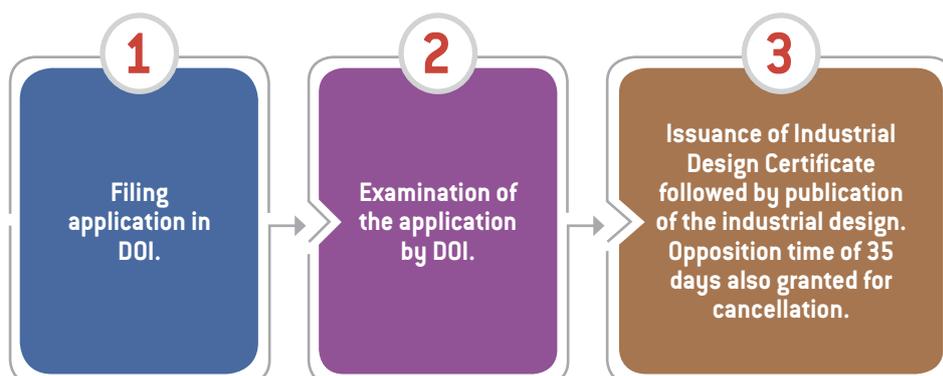
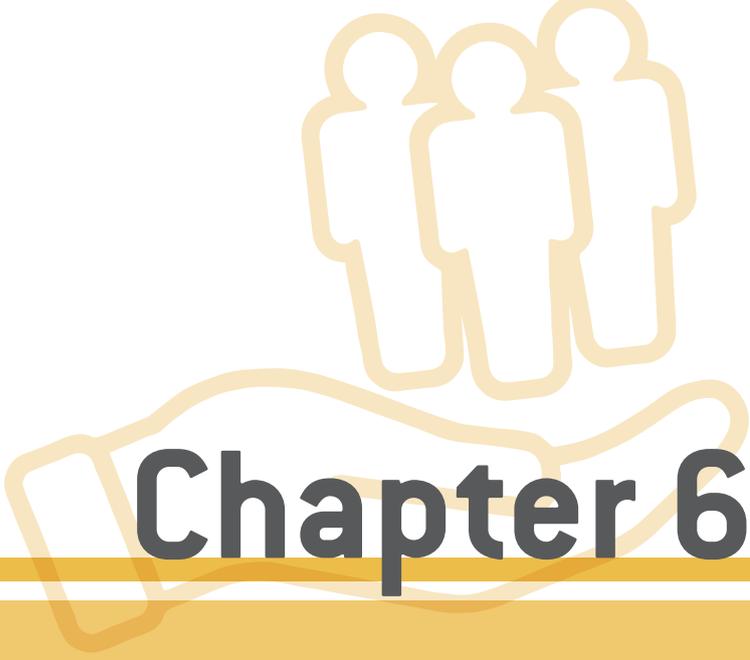


Figure: Procedure for Registration of Copyright

11. What is the term of protection of copyright?

- The Copyright Act provides several terms of protection for authors/creators' works which are given as follows,
- Economic & Moral Rights of a creator/author shall be protected throughout their life and additional 50 (fifty) years after their death. In case of a work of joint authorship, the term provided after the death of the author shall be calculated from the death of the last surviving author.
- Applied arts and photographic works are protected for 25 (twenty-five) years from the year of preparation of the work.
- The rights of sound recording shall be protected for 50 (fifty) years from the publication of such sound recording.
- The broadcasts of broadcasting organization shall be protected for 50 (fifty) years from the year of commencement of such broadcast.
- The performance of performer shall be protected for 50 (fifty) years from the year of performance.



Chapter 6

HUMAN RESOURCE

1. What are the governing laws and authorities to regulate employment in Nepal?

The matter relating to employment in Nepal is primarily governed by:

- i. The Labor Act 2017, (2074) (“Labour Act”) and
- ii. The Labor Rules 2018, (2075) (“Labour Rules”) in Nepal
- iii. The Contribution Based Social Security Act, 2017 (2074) (“Social Security Act”)
- iv. The Contribution Based Social Security Rules, 2018 (2075) (“Social Security Rules”)
- v. The Social Security Schemes Directives, 2018 (2075) (“Social Security Directives”)
- vi. The Trade Union Act, 1992 (2049) (“Trade Union Act”)
- vii. The Trade Union Rules, 1994 (2050) (“Trade Union Rules”)
- viii. The Bonus Act, 1973 (2030) (“Bonus Act”)
- ix. The Bonus Rules, 1982 (2039) (“Bonus Rules”)
- x. The Foreign Employment Act, 2007 (2064) (“Foreign Employment Act”)
- xi. The Child Labor (Prohibition and Regulation) Act, 2000 (2056) (“Child Labor Prohibition Act”)
- xii. The Right to Employment Act, 2018 (2075) (“Employment Act”)
- xiii. The Right to Safe Motherhood and Reproductive Health Act, 2018 (2075) (“Safe Motherhood Act”)
- xiv. The Sexual Harassment at Workplace Prevention Act, 2015 (2072) (“Sexual Harassment at Workplace Act”)

[The laws listed from i. to xiv. under query 1 are to be collectively referred to as the “Labor Laws”). The Department of Labor (the “DOL”) and Labor Office are the authorities that regulate matters relating to employment.]

2. What is the applicability of the Labor Act?

The Labor Act is applicable to any company, private firm, partnership firm, cooperatives, association or other organization in operation or established, incorporated, registered or formed under prevailing laws regardless of its objective to earn profit or not. The Labor Act also applies to the foreign entity engaged in the promotion of business, sale of its products or other work, including liaison office, in Nepal.

HIRING

3. What are the modes of hiring of the employees?

The employees in any entity can be hired in different ways which includes:

- (a) Regular Employment,
- (b) Work Based Employment,
- (c) Time Bound Employment,
- (d) Casual Employment and
- (e) Part- time Employment.

4. When can a company hire foreign national?

The Labor Act restricts any foreign nationals to work in Nepal without obtaining work permit. The foreign nationals

- (a) having diplomatic immunity, or
- (b) who are not required to obtain work permit under a treaty or agreement entered into with the GON

are however exempted from the work permit requirement.

The hiring process of foreign nationals varies based on the work or nature of the local entity. The foreign nationals may be hired

- (a) if local skill set is not available, or
- (b) by the foreign investment company up to certain numbers, or
- (c) for short term technical work.

5. Are Indian nationals required to obtain a work permit in Nepal?

The Indo-Nepal Peace and Friendship Treaty 1950 provides privileges of participation in trade and commerce to the national of one country to another. The treaty also provides national treatment in participation in industrial and economic development on reciprocity basis, to the national of one country to another. In view of the treaty provisions and the provision of Labor Act, Indian nationals should not be requiring work permit in Nepal.

However, the Labor Rules require an employer to register the employee who is a foreign national exempted from work permit requirement at Department of Labor. Therefore, the Indian nationals should be registered with the Department of Labor even if they do not require work permit in Nepal.

6. Is employment agreement mandatory?

The Labor Act requires the employer to provide written employment agreement to all employees. However, the written employment agreement is not mandatory for casual employees (working for seven days or less in a month). Furthermore, the Labor Rules provide that a written employment agreement must include:

- (a) Nature of employment,
- (b) The core responsibilities and designation of the employee,
- (c) Employment handbook to be an integral part of it,
- (d) The place, date and commencement date of employment agreement, and
- (e) Any other conditions as per service and work of the employee.

7. How can employees be appointed through an outsourcing entity?

Outsourced employees can be appointed through licensed outsourcing companies. The Labor Act restricts the employer to engage outsourced employees in any core work of the Company.

The Labor Act defines core work as the work which is specified at the time of establishment of business and other works directly related to such specified work. Accordingly, the GON has specified the works subject to outsourcing through Gazette notification dated October 05, 2018. The works include:

S.No.	Category of Services	List of Works
1	Security Services	(a) Security employees
2	Facilitating Services	(a) Employees required for management of all types of sanitation and waste management, (b) Gardener for management of garden including agricultural employees, (c) Office assistant (for preparing tea and lunch or messenger service) (d) Employees for canteen and catering.
3	Business Support Services	(a) Driver, conductor, (b) Employees required for loading-unloading, transportation of goods and store management, (c) Employees required for repair and maintenance and technical support and consultancy, (d) Construction employees including plumber, electrician, builder, carpenter.
4	Domestic Help Services	(a) Domestic employees including house maid, care giver

8. What is the maximum probation period?

The Labor Act allows an employer to hire employees on probation for 6 months. The probation period cannot be extended beyond six (6) months. The service of an employee may be terminated during the probation period if his/her service is not found satisfactory.

REMUNERATION AND WORKING HOURS

9. What is the maximum working hour?

The Labor Act allows the employer to engage the employee in work for 8 hours a day and 48 hours a week. Employees are entitled to 30 minutes break for every consecutive work of 5 hours which is included in the working hours.

10. Is there any provision for overtime?

Yes, the working period beyond 8 hours a day constitutes overtime. The employee may be engaged for overtime not exceeding 4 hours a day and 24 hours a week with the consent of the concerned employee. Employees should be paid for overtime service at the rate of 1.5 times of his/her basic remuneration.

11. What is the minimum remuneration that employees are entitled to?

The Ministry of Labor, Employment and Social Security (the “Ministry of Labor”) fixes the minimum remuneration for every two years. As per the Gazette notification dated August 16, 2018 (2075-04-31) the current minimum remuneration is as follows:

S.No.	Minimum Remuneration/ Wage	Basic Remuneration	Dearness Allowances	Total
1	Monthly	NPR 10,820/-	NPR 6,480/-	NPR 17,300/-
2	Daily	NPR 418/-	NPR 250/-	NPR 668/-
3	Hourly	NPR 56/-	NPR 33/-	NPR 89/-

12. Is there any mandatory requirement of remuneration increment?

Yes. The Labor Act mandatorily requires for the annual increment in remuneration of the employee. Such increment should not be less than a half day's remuneration of the concerned employee.

BENEFITS AND LEAVE

13. What are the leave and holidays that employees are entitled to?

The Labor Act provides for holidays and leave to be provided to employees. The leave and holidays that the employees are entitled to are as follows:

S. No.	Holiday/ Leave	Number of Days	Paid/ Unpaid	Remarks
1	Weekly Off	One (1) day in a week	Fully paid	-
2	Public Holiday	13 days annually including May Day	Fully paid	Female employees are entitled to 14 days public holiday (including May Day and International Women's Day)
3	Home Leave	18 days annually (at 1 day leave for each 20 days worked)	Fully paid	Up to 90 days of home leave can be accumulated and should be en-cashed at the time of cessation of service. The unused home leave, if any, exceeding 90 days can be en-cashed in the concerned year.
4	Sick Leave	12 days annually	Fully paid	Employees working for less than 1 year are entitled to Sick Leave on pro rata basis. Sick Leave can be accumulated for up to 45 days and should be en-cashed at the time of cessation of service. The unused sick leave, if any, exceeding 45 days can be en-cashed in the concerned year.
5	Maternity Leave	98 days	Fully paid	Such leave can be extended for up to 1 year without pay if required as per the recommendation of the doctor.
		Additional 30 days	Fully paid	Additional leave can be provided before or after a complicated surgery as per the opinion of a specialist doctor due to morbidity.
6	Paternity Leave	15 days	Fully Paid	Paternity leave is provided to the male employee whose wife delivers a baby.
7	Bereavement Leave	13 days	Fully paid	This leave is provided in case of death of (a) spouse and/or parents, (b) In laws in case of married women. The leave is also provided if the employee observes the mourning rituals as a matter of custom.
8	Compensatory Leave	Entitled for work done on weekly off or public holiday		The compensatory leave should be provided within 21 days from the date of engagement in such work.

14. What are the retirement benefits that employees are entitled to under labor laws?

Each employee is entitled to provident fund and gratuity from the first day of employment. The employer and employee should contribute 20% and 11% respectively of the basic remuneration of the employee for Social Security Fund ("SSF") (upon enrollment with SSF) every month.

a. Provident fund

Provident fund is the contributory fund i.e. the employer will deposit 20% of basic salary in the account maintained at the SSF (10% contributed by the Employer and 10% deducted from Employee's salary). The amount shall be deposited in monthly basis to SSF .

b. Gratuity

Each entity is required to provide gratuity at the rate of 8.33% of basic remuneration from the first day of employment every month and deposit the same to the SSF.

c. Additional Contribution

1.67% of your Basic Remuneration will be deposited by the Employer in a monthly basis into the SSF. You will also have to deposit 1% of your Basic Remuneration as the social security payment in SSF.

d. Deposition of Provident Fund and Gratuity

The allocated amount of provident fund and gratuity should be deposited in the SSF.

15. What are the insurance requirements for employees?

Each employee is entitled to accidental insurance of at least NPR 700,000 (Seven Hundred Thousand) covering all types of accidents and annual medical insurance of at least NPR 100,000 (One Hundred Thousand). The premium for annual medical insurance is to be shared equally by the employee and the entity whereas the premium for accidental insurance is to be fully paid by the entity itself.

16. Is there any Social Security System in Nepal?

The Social Security Act and Social Security Rules cover the social security systems. The Laws require the employer to be registered with the SSF and thereafter register its employees with the SSF. The SSF has recently introduced the following schemes in Nepal:

S.N.	Social Security Schemes
1	Medical Treatment, Health and Maternity Scheme
2	Accident and Disability Scheme
3	Dependent Family Scheme
4	Old Age Scheme

The Social Security Schemes ("SSS") are mandatory for the employers.

17. What is the Contribution for the SSF?

The employer and employee should contribute 20% and 11% respectively of the basic remuneration of the employee for SSF every month as mentioned above in query Section 14. The contribution includes the contribution towards the provident fund by the employer and employee and contribution towards gratuity by the employer.

MISCONDUCT AND CESSATION

18. What are the misconducts and disciplinary actions prescribed by the labor laws?

The Labor Act provides the list of misconducts and disciplinary actions for such misconducts. The disciplinary actions include (a) Reprimand/warning, (b) Deduction of One Day Salary, (c) Withholding Annual Increment or Promotion and (d) Dismissal. The type of sanctions/disciplinary action depends on the severity of the misconduct. The Labor Act provides the procedures for disciplinary actions such as hearing opportunity, timeline, authority to take actions, etc.

19. What are the other grounds of cessation of service of the employee?

The Labor Act provides grounds of cessation of the employment in addition to dismissal for misconduct. The other grounds for cessation includes: (a) Retirement, (b) Voluntary Resignation, (c) Expiry of Contract (For time-bound employees), (d) Completion of Work (For work-based employee), (d) Bad Health (e) Unsatisfactory Performance, (f) Sexual Harassment at the workplace.

20. What is the notice requirement under the labor laws?

The employer or employee must provide due notice or salary in lieu of notice for the cessation of service except cessation due to misconduct. The prescribed notice period under the existing laws are as follows:

Period of Employment	Social Security Schemes
For up to 4 weeks	1 day
4 weeks to one year	7 days
Exceeding 1 year	30 days

MISCELLANEOUS

21. What is the mechanism for transfer of employee?

The Labor Laws have prescribed for transfer of employees in two ways (a) within the entity, (b) from one entity to another entity. The consent of the employee is required for the transfer (a) to a different entity and (b) with changes in the terms, conditions and position of the employee.

22. Are employees eligible to form trade union at any entity?

The formation, function and power of trade union is regulated by the Trade Union Act 1992 (the "Trade Union Act"). The Act restricts managerial level employees including the employee working in the capacity as head of branch, unit or department to be a part of a trade union.

23. Is there any requirement of Labor audit?

The Labor Act requires every entity to conduct the labor audit as per the standards prescribed by the Ministry of Labor. The labor audit report so conducted needs to be submitted to the Labor Office or supervisor if asked or during inspection of the entity.

Labor Regulation 2018 requires the entity to conduct labor audit by the end of Nepali Month of Poush (Mid- January) every year as per the criteria defined by the Ministry of Labor. The Ministry of Labor has issued the labor audit standard 2018 effective from November 22, 2018. An entity may conduct its labor audit by a management level employee working in the same entity or hire an external expert working in the field of employment. The standard so published mainly covers the (a) Scope of labor audit, (b) Eligibility of labor auditor, (c) Procedure of labor audit, (d) Responsibilities of entity, and (e) Sanctions

24. What are the compliances regarding formation of different committees under Labor Laws?

The Labor Act requires any entity to form different committees based on the total head count. An entity having 10 or more employees is required to form a Labor Relation Committee. Similarly, an entity having 20 or more employees is required to form a health and safety committee pursuant to the prevailing laws of Nepal.

25. What is the mechanism for settlement of disputes?

The Labor Act provides for the dispute settlement mechanism for both (a) Individual dispute and (b) Collective dispute. The dispute settlement mechanisms differ as per the nature of dispute and the entity.

26. What are the requirements for health and safety arrangement?

The Labor Act requires each entity to formulate a health and safety policy which should be registered at the Labor Office.

27. What are the consequences of major non-compliance of Labor Laws?

The Labor Act prescribes different sanctions for the non-compliance of the provisions of the Labor Laws which mainly includes:

- a. Appropriate order by the Labor office or Department of Labor,
- b. Indemnification of the number of benefits,
- c. Imposing fine for various non-compliances up to NPR 500,000 (Five hundred Thousand)

28. Is there any requirement for the distribution of bonus?

The Bonus Act 1974 (“Bonus Act”) is the primary legislation dealing with the distribution of bonus to employees. Each profit-making entity is required to allocate 10% of its profit (profit before tax) of one fiscal year for the purpose of distributing the bonus. Each employee who has worked for at least half of any fiscal year is entitled to receive bonus. The Bonus Act has prescribed the ceiling for the distribution of bonus to each employee. Seventy percent (70%) of the amount remaining after distribution of bonus is required to be deposited in a Welfare Fund of the concerned entity and the remaining thirty percent (30%) is required to be deposited in the National Level Welfare Fund.

29. What is the maximum ceiling for distribution of the bonus?

The Bonus Act deals with, among other things, the eligibility criteria, the disqualification for bonus, rule for calculation of bonus including ceiling for bonus. The maximum amount of bonus distributable to the employees in any fiscal year is based on the monthly remuneration of the employee. An employee who is (a) receiving monthly remuneration/wage for more than two times of the minimum remuneration prescribed by the Government of Nepal is entitled to bonus up to an amount equivalent to his/her six months remuneration and (b) receiving monthly salary/wage up to two times of the minimum remuneration prescribed by the Government of Nepal is entitled to bonus up to an amount equivalent to his/her eight months remuneration.

30. What is the requirement of enrollment of employers at Social Security Fund?

As required by the Social Security Act, the Ministry of Labor has published a notice in the Nepal Gazette on Nov.12, 2018 (2075-07-26) requiring the employer to be enrolled with the SSF. All employers are required to be registered with the SSF within the given timeline defined in the Gazette notice. The employer should also enroll its employees at the SSF within the defined timeline.



Chapter 7

IMPORT AND EXPORT OF GOODS

1. What are the relevant laws and authorities relating to import and export?

The relevant laws dealing with matters related to import and export are:

- a. Export and Import Control Act 1957 (“Export and Import Control Act”),
- b. Customs Act, 2007 (the “Customs Act”)
- c. Customs Rules, 2007 (the “Customs Rules”),
- d. Notices issued by the Ministry of Commerce, Industry and Supplies,
- e. Circulars issued by NRB from time to time,
- f. Annual Finance Act (which is based on the annual budget speech of the Finance Minister) enacted by the GON.
- g. Exim Code Procedure, 2021

Department of Customs and NRB are the main regulatory bodies with regard to import and export.

2. Do companies need to obtain any code for import and export of goods?

Yes. If the goods to be imported at a time values more than NPR 10,000 (Nepalese Rupees Ten Thousand) or if goods to be exported exceeds NPR 10,00,000 (Nepalese Rupees Ten Lakh) then the local company has to obtain export import code (“EXIM Code”) from the Department of Customs.

To obtain the EXIM Code, the local company should submit the following documents to the Customs Office through a computerized software system:

S.No.	Documents
1	Application available on the Department of Custom’s website.
2	Entity registration certificate from Department of Commerce [with objective to import/export] Note: This will not be applicable to the local company because foreign invested companies are prohibited from doing business of import/export.
3	License as per the Direct Sales of Goods [Management and Regulation] Act 2018 Note: This may not be applicable to the local company because foreign invested companies are prohibited from doing business of retailing.
4	Industry Registration Certificate issued by Department of Industry

5	Recommendation from Department of Industry
6	Shareholders Register showing paid up capital of NPR 10 Lakhs
7	Permanent Account Number (PAN) Certificate
8	Value Added Tax (VAT) Registration (if goods to be imported require VAT registration)
9	Proof showing that no dues are payable to the GON
10	Bank Guarantee of NPR. 300,000 from a Commercial "A" category Bank (the validity period must be a minimum of 1 year)
11	Recommendation from local company's bank
12	Proof and assurance that there is no due tax payable to the Government of Nepal

3. When will the EXIM Code not be required?

The EXIM Code would not be required for bringing personal goods of travellers, for import of goods of up to NPR 10,000 (at one time) and for export of goods up to NPR 10,00,000 (at one time).

4. Is there any prohibition or restriction for import and export of goods in Nepal?

Yes, export and import of certain goods are prohibited and restricted. GON, Ministry of Commerce, Industry and Supplies by publishing a notice in the Nepal Gazette, specifies the list of restricted, prohibited and permitted goods. Further, circulars issued by the NRB also prescribe lists of goods that are restricted. Certain goods are prescribed with quantitative restriction while for others approval is required to be obtained on the recommendation of concerned authority.

Except for the goods restricted for export and import under the Export Control Act and Export Control Regulation and notice published by the GON, other goods can be freely exported to and imported from Nepal provided that the other existing laws are complied with.

The table below illustrates examples of such prohibition, restriction and approval requirement, and is not exhaustive as they are subject to changes pursuant to the GON notifications.

IMPORT		EXPORT		
Prohibited	Required approval/recommendation	Prohibited	Quantitative restriction	Required approval/recommendation
Narcotic drugs such as marijuana, opium and morphine	Arms, ammunition, and explosives (except under import license of the GON, and/or on recommendation of Home Ministry): <ul style="list-style-type: none"> materials used in the production of arms and ammunition; guns and cartridges; caps other than those of paper; and arms, ammunition and other explosives. 	Articles of Archaeological and Religious importance: <ul style="list-style-type: none"> national and foreign coins of archeological value; idols of gods and goddesses, palm leaf inscription (Tad Patra), Plant leaf inscription (Bhoj Patra); scroll (Thanka paintings) of historical importance. 	Paddy, rice, wheat, paddy, peas, sugar (except to be received from European Union).	Yarshagumba on approval of Department of Forests
Liquor containing more than 60 % alcohol	Radio Communications equipment (except under import license of the GON or on recommendation of the Ministry of Information and Communication): <ul style="list-style-type: none"> wireless walkie-talkies, and other similar audio communication equipment. 	Industry / Raw Materials: Raw hide (including dry salted); <ul style="list-style-type: none"> raw wool; all imported raw materials, parts and capital goods. 	lentils	Imported raw material for industry which were not used, on recommendation of concerned department

Valuable metals and jewelry (except permitted under bag and baggage regulations)	Beef and beef products (Five-star hotels are allowed to import beef with a special license issued by the Department of Commerce)	Narcotics Drugs and Psychotropic Substance as defined in the Single Convention of Narcotics, 1961		
		Articles of Industrial Importance: <ul style="list-style-type: none"> Explosives materials and fuse or materials needed there for; Materials used in the production of arms and ammunition. 		
		Conserved Wildlife and Related Articles: <ul style="list-style-type: none"> wild animals, bile and any part of wild animals, musk; snake skin, lizard skin. 		
		Conserved bio-diversity and environmental protection related forest products: <ul style="list-style-type: none"> marsh orchid (Dactylorhiza hatagirea); okhar (juglans regia); lichen; different types of timbers; unprocessed asphaltum. 		
		Other products: <ul style="list-style-type: none"> imported petroleum and oil products; extracted sand, gravel, and boulders. 		

5. What is the procedure to export and import goods from/to Nepal?

The local company needs to submit the following documents along with the Declaration Form to the concerned Customs Office:

S.No.	Import from any other country except India	S.No.	Import from India
1.	Banking documents related to payment process such as letter of credit	1.	Authority Letter of Customs Agent
2.	Invoice	2.	Delivery order of Terminal Management Company (TMC) in case of inland clearance depots (ICDs) at Biratnagar, Birgunj, and Bhairahawa
3.	Packing list	3.	Invoice
4.	Bill of lading or Airway Bill	4.	Nepalese Customs Declaration
5.	Certificate of origin	5.	Packing list
6.	Duly completed Foreign Exchange Control Form	6.	Additional documents for specific cargo such as plant quarantine/health/phyto-sanitary certificates for plants, lab test report for food products, analysis report for chemicals, health certificate for raw wool, a veterinary certificate for animals, etc. where applicable

7.	If any goods are to be imported using India as transit, then documents related to such transit		
8.	Delivery order of the concerned airlines company if the goods are imported by air		
9.	Permit/License/Recommendation from the concerned Government agency if required under the existing laws		

S. No.	Export from Nepal
1.	Business Registration Certificate
2.	PAN with VAT registration
3.	EXIM Code
4.	Single Administration Documents (SAD)- Pragypan Patra or The Yellow Form
5.	Certificate of Origin (COO) and Generalized System of Preferences (GSP) Form A wherever applicable
6.	Packaging list
7.	Commercial Invoice
8.	Payment Certificate- Letter of Credit (L/C) or certificate if advance payment

If the goods are being exported/ imported by any company or firm for the first time, then the registration certification and tax registration certification are also required to be submitted to the Customs Office.

6. Is test marketing permissible for importing goods in Nepal?

Yes. Test marketing by a company with foreign investment is permissible for only a certain period of time. The Industrial Enterprises Act, 2020 regulates the matter relating to testing marketing and permits test marketing within prescribed terms and conditions set out in the Industrial Enterprises Regulation 2022. The foreign invested company must give an application to the DOI for obtaining import permission. These conditions may be imposed by DOI while granting import permission:

- Imported goods shall not have been imported and sold in Nepali market through any other person, firm or company,
- No more than 50% of the approved scheme can be imported while providing approval for import for trial and
- Imported goods can be sold only as a trial.

7. What is the custom duty applicable on the goods imported to Nepal?

The custom duty of any goods shall be determined according to the tariff (rate of duty) prevailing on the date on which the Declaration Form of such goods is registered at the Customs Office. Nepal uses the Harmonized commodity Description and Coding System to classify products and duty. The rates for 2020/21 and the subsequent fiscal years can be accessed in the website of the Department of Customs.

8. How are imported goods paid for?

Imports from India are normally paid in Indian Rupees. However, the Nepal government allows imports of some products from India with payment in hard foreign currency.



Chapter 8

DRY PORTS/ICDs AND ICPs IN NEPAL

1. What are the laws regulating the multimodal transportation of goods in Nepal?

The laws regulating multimodal transportation of goods in Nepal are mainly covered by the Multimodal Transportation of Goods Act, 2063 BS (2006 AD), and the Multimodal Transportation of Goods Rules, 2066 BS (2009 AD).

2. What could be the mechanism for import and export of goods from and to third country from a landlocked country like Nepal?

Nepal is a landlocked country, surrounded in the East, South and West by India, and in the North by the Tibet Autonomous Region of People's Republic of China. Nepal's access to international trade markets depends on transport infrastructure, logistics services and transit facilities to and from these neighboring countries.

The border between Nepal and India is inter-connected by 27 agreed routes, subject to timely review as per trade treaty between the two countries. Nepal bound third country consignments are ferried to and from seaports of India in containers through trucks and trains. The same routes are used in case of bilateral trade between Nepal and India as well.

3. Is there the possibility of moving goods via air to Nepal for third country trade other than road or rail links?

Yes, Nepal is internationally connected through Tribhuvan International Airport in Kathmandu. As of June 2023, there are additional two international airports viz, Gautam Buddha International Airport at Bhairahawa and Pokhara International Airport, however, these are yet to be in full operation.

4. Which are the major Customs points between Nepal and India for the purpose of bilateral and third country trade?

At present, there are 12 major customs points between the Nepal-India border in the East and South of Nepal, and 2 major customs points between the Nepal-China border in the North. The major custom points include a) Birgunj-Raxaul (in central Nepal), b) Biratnagar-Jogbani (in Eastern Nepal), c) Bhairahawa-Nautanawa (in Western Nepal), d) Mechi-Panitanki (in the far Eastern Nepal), and e) Nepalgunj/Nepalgunj Road (far Western Nepal) and f) Tribhuvan International Airport (in Kathmandu). Over 90% of bilateral and international trade are covered by the custom points mentioned above.

Due to topographical conditions in the Northern border of Nepal, imports from different provinces in

China are ferried in practice from Kolkata or Vishakhapatnam ports to Nepal. As of June 2023, there are additional two international airports viz, Gautam Buddha International Airport at Bhairahawa and Pokhara International Airport, however, these are yet to be in full operation.

5. What is the status of trade related infrastructures in major customs points between Nepal and India for both bilateral and third country trade from the ports of India?

There are several dry ports in Nepal for inbound and outbound cargo. The first dry port of Nepal is at Birgunj, Sirsiya which has been in operation since 16th July, 2004. The consignments are ferried by trucks from Raxaul to Birgunj, where Birgunj Dry Port is connected to Indian railway services and 1586 containers can be managed at a time.

Similarly, Nepal also has dry ports in Biratnagar and Mechi Customs in the Eastern region as well. Apart from dry ports, there are Integrated Check Posts (ICP) in Birgunj and Biratnagar as well. Of which, the Biratnagar Check Post is also now connected with the Indian railway.

6. How many Integrated Check Posts and Inland Container Depots are there in Nepal?

There are 8 Inland Container Depots (ICD) and 4 Integrated Check Posts (ICP) in customs points between Nepal and India. The status of the entire ICD and ICPs in Nepal has been illustrated in the following table as in June, 2023.

Name of Project	Project Location	Site Area	Facilities Available	Access (Train/Truck)	Current Status
Kakadhbhatta ICD	Koshi Pradesh Jhapa District Customs Point: Kakarvitta/Naxalbari	7.5 Hectare	Basic infrastructure	Truck	Operation
Biratnagar ICP	Koshi Pradesh Morang District Customs Point: Biratnagar/ Jogbani	78.38 Hectare	Basic infrastructure with Immigration	Truck/ Train	Operation
Birgunj Dry Port (ICD)	Madhesh Pradesh Birgunj Metropolitan Customs Point: Birgunj/Raxaul	38 Hectare	Basic infrastructure	Train	Operation
Birgunj ICP	Madhesh Pradesh Birgunj Metropolitan Customs Point: Birgunj/Raxaul	78.88 Hectare	Basic infrastructure	Truck	Operation
Bhairahawa Dry Port (ICD)	Lumbini Pradesh Rupandehi District Customs Point: Bhairahawa/Nautanawa	3.6 Hectare	Basic infrastructure	Truck	Operation
Bhairahawa ICP	Lumbini Pradesh Rupandehi District Customs Point: Bhairahawa/Nautanawa	35.11 Hectare	Basic infrastructure with Immigration	Truck	Stone laid on June 1, 2023
Nepalgunj ICP	Lumbini Pradesh Banke District Customs Point: Nepalgunj/Nepalgunj Road	44.36 Hectare	Basic infrastructure with Immigration	Truck	Inaugurated on June 1, 2023
Dodhara Chandani ICP	Far Western Pradesh Kanchanpur District	63 Hectare	Basic infrastructure with Immigration	Truck	MoU Signed in 2023 June for construction
Chovar Dry Port (ICD)	Bagmati Pradesh Kathmandu District	11.19 Hectare	Basic infrastructure	Truck	Operation
Tatopani Dryport (ICD)	Bagmati Pradesh Sindhupalchowk District	4.2 Hectare	Basic infrastructure	Truck	Operation
Timure Dry Port (ICD)	Bagmati Pradesh Rasuwa District	8.5 Hectare	Basic infrastructure	Truck	Construction going on

Note: Basic Infrastructure means Admin Building, Customs, Quarantine, Warehouse, Parking, Bank, Canteen, Security, Inspection Shed, Weighbridge.

7. What sea ports are available in Nepal?

Nepal has the option of utilizing both the Haldia and Kolkata ports for its third-country trade endeavors. Moreover, since June 24, 2016, the Vishakhapatnam port has also been accessible for cargo destined to Nepal. Despite Vishakhapatnam being nearly twice as far from Birgunj, Nepal, compared to Kolkata, it has emerged as a more convenient and streamlined option in contrast to the Kolkata and Haldia ports. This preference is attributed to Vishakhapatnam's deeper sea, which enables it to accommodate mother (larger) vessels, facilitating the handling of more substantial consignments than its counterparts in Kolkata and Haldia.

8. How safe are the consignments from pilferage and damage during transporting by train and truck from seaport to Nepal Border and vices versa?

The goods are covered with insurance for transit movements in general. Special provisions of sealed CTD with bullet sealed for containers and special seal and lock system for truck shipment are prevalent.

9. Where are the Customs check points for bilateral and international trade of Nepal with India and third countries for imports and export?

Birgunj/Raxaul, Biratnagar/Jogbani, Kakarvitta/Panitanki (Rayagung), Bhairawaha/Nautanwa (Sunauli), Nepalgunj/Nepalgunj Road are major customs border points within Nepal.

10. What are the documentation formalities required for Nepal to export to India?

Letter of Credit (L/C), Telegraphic Transfer (TT) or Advance payment, Proforma Invoice, Proper Contract Between Buyer and Seller with Terms of Payment and Liability up-to Points of Delivery, Packing List, Commercial Invoice, Necessary Permit from the Department of Commerce, Supplies and Consumer Protection (CoCSCP), Certificate of Origin, Authority Letters for Custom Clearing Purpose, Proof of Transport like Road Consignment Note (Bilti) if by road, Rail Consignment Note (RR) if by rail or AWB (air shipment).

In the receiving end in India all documents mentioned above will be required, with the addition of any import license or permit etc., where required.

11. What are the documentation formalities for Nepal's import trade with India?

The documentation formalities required for Nepal's import trade with India are the same as that needed for export to India.

12. What are the documentation formalities for Nepal's export trade with third countries via India?

The documentation formalities required for Nepal's export trade with third countries via India are the same as all the documents mentioned above, with the addition of CTD and a bill of lading. Furthermore, please refer to Chapter 7 as well for documentation requirement surrounding import and export.

13. What are the documentation formalities for Nepal's import trade with third countries via India?

All documents mentioned above with addition of transport documents based on mode of shipment, will be required for Nepal's import trade with third countries via India. There may also be an extra requirements of a special clearance, from the Consulate General of Nepal (CGN) office, Kolkata, with the authority by buyer (Nepalese) to an Indian clearing agent endorsed by importer's bank.

14. How the goods are distributed within Nepal from the border customs points?

The goods are distributed using Nepalese trucks normally. If the goods need to be delivered in ship container, the container is moved in trailer trucks. At times Indian trucks also deliver goods as there is provision to enter Nepal and return to the border point within 72 hours.

Chapter 9

SPECIAL ECONOMIC ZONES

1. What is the law governing SEZ in Nepal?

The primary laws governing SEZ in Nepal are Special Economic Zone Act, 2016 (2073 B.S.) (the “SEZ Act”) and the Special Economic Zone Regulation, 2017 (2074) (the “SEZ Rules”).

2. What kind of Industries are permitted to be established in SEZ?

Industries permitted to be established in SEZ include all industries except those listed in Annexure 3 of the SEZ Rules. The restricted industries for establishment in SEZ are as follows:

- i. Cigarettes, viddi, khaini, cigars, and tobacco products producing industry.
- ii. Brandy, cider, wine, beer, and whiskey producing industry.
- iii. Explosive materials producing industry.
- iv. Weapons, bullets, gunpowder producing industry.

3. Is there a requirement to obtain a special approval to operate an industry in SEZ in Nepal?

An Indian investor who wishes to operate an industry within a SEZ in Nepal must obtain (a) License from SEZA to establish industry in a SEZ, and (b) Lease agreement with the SEZA.

4. What is the procedure for establishing industry in SEZ?



SEZA calls for application

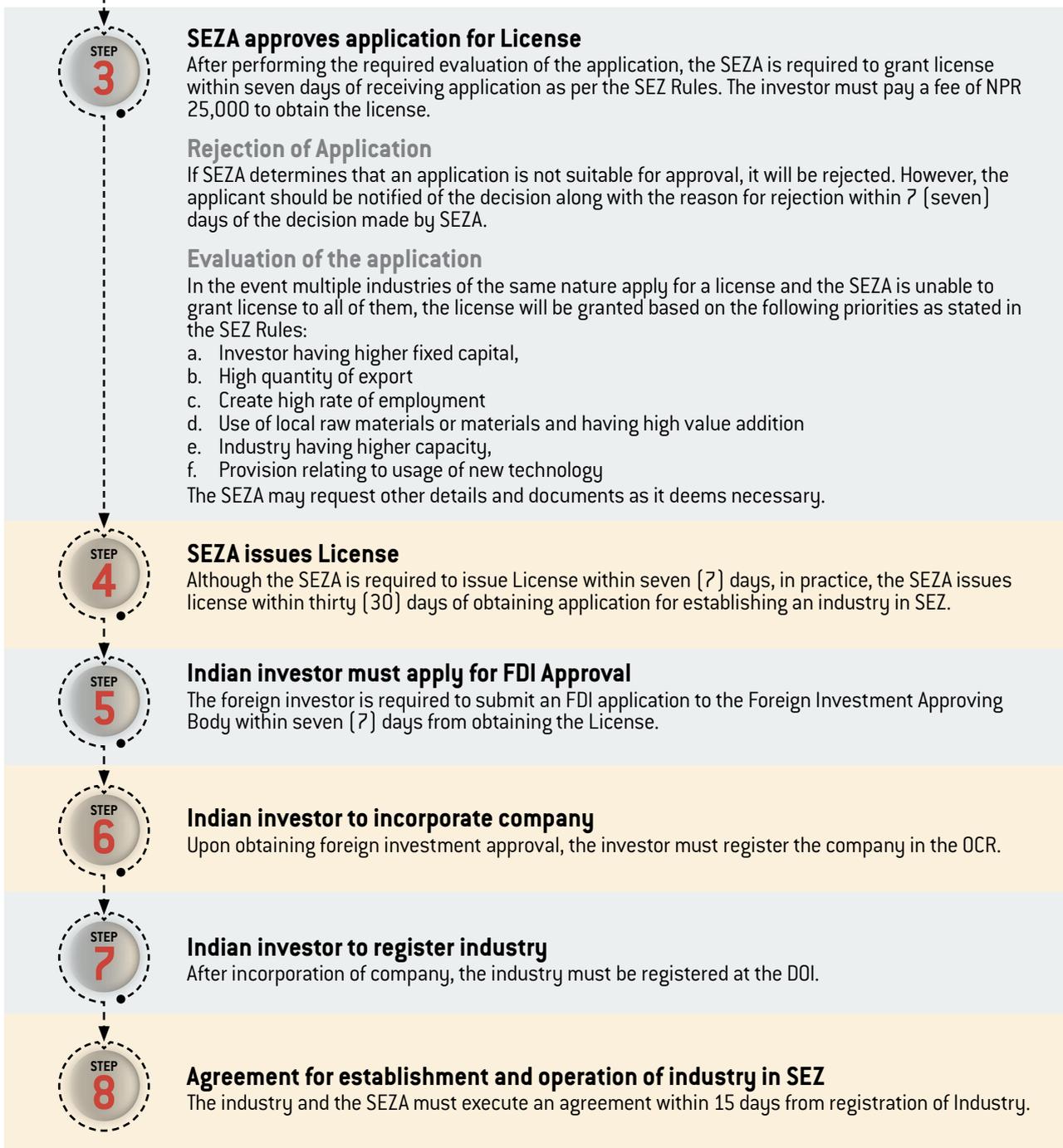
SEZA must publish a notice in a national-level newspaper to invite applications from investors interested in establishing an industry in the SEZ.

Such notice shall include (a) nature of eligible industry, (b) available infrastructure, (c) minimum lease amount, (d) address and date for submission of application, and (e) last for application submission.



Indian Investor must make application for obtaining License

The investors must submit an application in the prescribed format under Schedule-4 of the SEZ Rules to obtain a license to establish and operate industry within the SEZ.



5. What are the basic provisions that must be incorporated in an agreement for establishment and operation of industry in the SEZ?

For the purpose of establishing and operating an industry in the SEZ, the industry is required to execute an agreement with SEZA (the “SEZ Agreement”). Such agreement should include matter like:

- the amount of rent or lease for using the house, land, and other facilities, among other items (electricity, water, sewage, waste management, etc.);
- the date of incorporation and operation of the company;
- the quantity of goods to be exported;
- technology transfer;
- name and address of the industry;
- investment plan;

- g. privilege and facility to be obtained by the license holder for operation of the industry;
- h. tenure and renewal of license;
- i. insurance of the industry;
- j. fees to be submitted to the SEZA and payment process;
- k. conditions of breach of agreement and annulment of agreement;
- l. conditions and standards to be followed while establishing, operating and managing the industry;
- m. If the industry has non-Nepali worker or employee, work plan relating to making Nepali citizen skilled and replacing non-Nepali workers;
- n. transfer of industry outside the SEZ; and
- o. any other matters deemed necessary.

6. What is the Term of the SEZ License and can it be renewed?

Depending on the nature of the business, the license will last up to 30 years which can be extended for another 10 (ten) years at a time if an industry is operating at more than 30 (thirty) percent of total capacity (compared to the registered capacity).

The investor must submit an application within 35 days prior the license's expiration. However, if there is a delay, the investor may still apply within 15 days after the license expires, subject to the payment of a penalty.

If the investor fails to renew the license within the specified time period, the SEZ can revoke the license.

7. How many SEZ are there in Nepal?

Most SEZ of Nepal have been designed to promote manufacturing output of Nepal. The following are the list of present and proposed SEZ in Nepal:

Name and Location of Project	Potential Industries	Current Status
1. Bhairahawa SEZ Province 5, Rohini Gaupalika	Worn readymade Garment, Cement Block, Cement Electrical, Hume pipe Cement Precast, Steel wires and wires product, Medical Herbal extract, Cosmetic herbal extract, beverage, Ginger Processing Industry, Instant noodles, Mineral water and bottles, Electric Vehicle Assembly & Cosmetic Industry, Instant noodles, Footwear, Herbals, fruit and vegetables, etc.	In operation
2. Simara Garment Processing Zone Province 2, Gadhimai Municipality of Bara district	Worn readymade Garment etc.	Construction work started at Block A & seeking private sectors investment in Block B, C, D & E
3. Panchkhal SEZ Province 3, Panchkhal Municipality	Milk and Milk products, Natural and Herbal Medicines, Natural vegetable dyes, Noodles and pasta, Vegetables, Ghee, juice, jam etc.	Construction Ongoing
4. Biratnagar SEZ Burju Gaupalika	Food Products, Handicraft, Leather goods, Herbs Processing, Incense Sticks, Automobile Spare parts, etc.	DPR completed
5. Nuwakot SEZ Bidur Municipality	Forestry, Agro and Livestock, Electronics, Metal based and Manufacturing.	Completed Feasibility Study
6. Nepalgunj SEZ Rapti Sonari Gaupalika	Natural and herbal medicine, Agarbatti, Paper Industry, Fruits and Juice Industry etc.	Completed Feasibility Study
7. Rautahat SEZ Yamunamai Gaupalika	Leather Industries, Noodles Industries, Dairy Product, Baby Food Industries, Sugar and Distillery Industries, etc.	DPR ongoing

8. Gorkha SEZ Gorkha Municipality	Copper or aluminum utensils, Decorative Goods, Electrical Goods, Fruit Juice, Garment, handmade dress materials, Herbs, Hide and skins, Incense sticks and candles etc.	Completed Feasibility Study
9. Talban SEZ Talban Temporary Sibir	Garment Factory, Food Products, Tobacco and beverages, Plastic bags, Packaging material and carton box factory, Chocolate and candle etc	Completed Feasibility Study
10. Siraha SEZ Lahana Municipality	Diamond and gems cutting, Electronic goods (TV, computer, Recorders, Air Conditioners, Refrigeration equipments), Telecom and Accessories (Wire, Poles, Cabinet boxes), Silver Jewellery, Copper/ Bronze/Brass Products, Iron and steel products etc.	DPR completed
11. Dhangadi SEZ Burju Gaupalika	Diamond and gems cutting, Electronic goods (TV, computer, Recorders, Air Conditioners, Refrigeration equipments), Telecom and Accessories.	Completed Feasibility Study
12. Dhanusha SEZ Dhanushadham Municipality	Copper or aluminum utensils, Decorative Goods, Electrical Goods, Fruit Juice, Garment, Handmade Dress Materials, etc.	Completed Feasibility Study
13. Jumla SEZ Kanaka Sundhar Gaupalika	Leather Processing, Pashmina Industry, Medicinal and Aromatic Plants, Honey Processing, Apple Processing, Local Paddy etc.	DPR Completed
14. Jhapa SEZ Kamal Gaupalika	Agro-Forestry Industries	Feasibility Study ongoing

8. Can Industry located outside SEZ be relocated into SEZ?

Section 7 of the SEZ Act does not restrict any industry registered or operated at the time of commencement of SEZ Act from relocating within the SEZ. Further, it is permissible to transfer the machine, equipment or appliances used by another industry into SEZ.

9. What is the export requirement for industry established in SEZ?

The industries operating within the SEZ must export At least 15% of the production for four years from commencement and, thereafter 30% of the production must be exported.

10. What are the concession and benefits granted to the industries established within SEZ?

Industries established within SEZ are accorded various fiscal and non-fiscal concession and benefits, which are tabulated below. These benefits would only be accorded subject to the established industries under SEZ meeting the threshold of minimum 60% export of goods or service.

I. Fiscal Incentives		
A. Income Tax		
1.	To SEZ established under Mountain District or Government of Nepal specified Hilly District	100% exemption for first 10 years after operation and thereafter 50% exemption for the remaining period.
2.	Other regions besides Mountain or Government of Nepal specified Hilly District	100% exemption for first 5 years after operation and thereafter 50% exemption for the remaining period.
3.	On the income generated via royalty and foreign technology or management service fee by a foreign investor established in a SEZ.	50% exemption
4.	On dividend earned by industries in SEZ	100% exemption for first 5 years after operation, 50% exemption for subsequent 3 years.
B. Customs		
1.	On the recommendation of SEZ Authority, for import of 1 bus to be used for transport of employees and 2 transport vehicles for transportation of goods, for once.	Only 1% customs duty

2.	Import of plant and machinery, tools & spare parts, packaging, raw materials and auxiliary parts.	On bank guarantee
3.	On sale of goods/raw materials to industry inside SEZ.	Duty refund

C. Value Added Tax ("VAT")

1.	On raw material and products sold to industry inside SEZ.	0% VAT
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II. Non-Fiscal Incentives

A. Visa Facilitation

1.	<p>Non-Tourist Visa</p> <ul style="list-style-type: none"> ● For 6 months to the investor to conduct feasibility study. ● For 5 years (maximum) to foreign employee. ● For 7 years to highly (special) skilled employee upon logical justification. ● Additional number of years for foreign employee critically important for the business and related to the use of State-of-the-Art technology.
2.	<p>Business Visa</p> <ul style="list-style-type: none"> ● Foreign investors and their family members, OR ● Authorized Representative of the company and their family members - Till the period of foreign investment.
3.	<p>Residential Visa</p> <p>Investors who invest USD 10 million or equivalent in convertible currency at once will get the visa for their family members as well till the period of foreign investment.</p>

B. Repatriation

1.	Employee: 70% of the net income in convertible currency allowed.
2.	<p>Investor:</p> <ul style="list-style-type: none"> – Amount received from the sale of some or all shares of foreign investment, – Amount received in lieu of dividends from such foreign investment, – Amount in lieu of payment of foreign capital loan or interest, – The investor shall take the amount in the currency prescribed in the agreement.

C. Others

1.	Non-nationalization of any industry established and operational within SEZ.
2.	Facility of One Stop Service Centre to aid investors and industries established within the SEZ.
3.	Utilization of bonded warehouse, sub-contracting between industries, deduction of depreciation in an accelerated rate.
4.	Workers are not permitted to carry out lock outs or strikes causing to create negative impact on the industry or its production.



Chapter 10

INDUSTRIAL PARK, INDUSTRIAL AREA AND INDUSTRIAL DISTRICTS

1. What are the laws governing Industrial Park, Industrial Area or Industrial District and who regulates them?

As per Section 55 of the IEA, the GON has the power to declare any part or place of the country with ample potentialities and opportunities for industrial development as an industrial village, industrial cluster, industrial zone, special economic zone or industrial corridor. The Industrial Area Operation and Management Regulation (“IAOM Regulation”), 2071 under Rule 3 provides for Industrial Area which are under operation and managed by Industry District Management Limited (herein referred as “IDML”).

Although the laws of Nepal do not define Industrial Park and Industrial District, in practice, they are being dealt by the IDML. Although there is an absence of a legislation dedicated to Industrial Park, a bill is being prepared to govern it.

2. What does IDML do?

IDML manages industrial estates and provides developed land, buildings, electricity, water, access roads, and other necessary industrial infrastructure to industries established in the industrial districts. Further, the control of ownership and protection of the Industrial Area/ District is vested upon IDML. IDML may lease building or land in the Industrial Area/ District as per the procedure in IAOM Regulation.

IDML is in process to operate Damak Clean Industrial Park, which shall be the first privately owned Industrial Park to be established in Nepal.

3. How many Industrial District/Area are operated and managed by the IDML?

In total there are fourteen (14) Industrial area which is as follows:

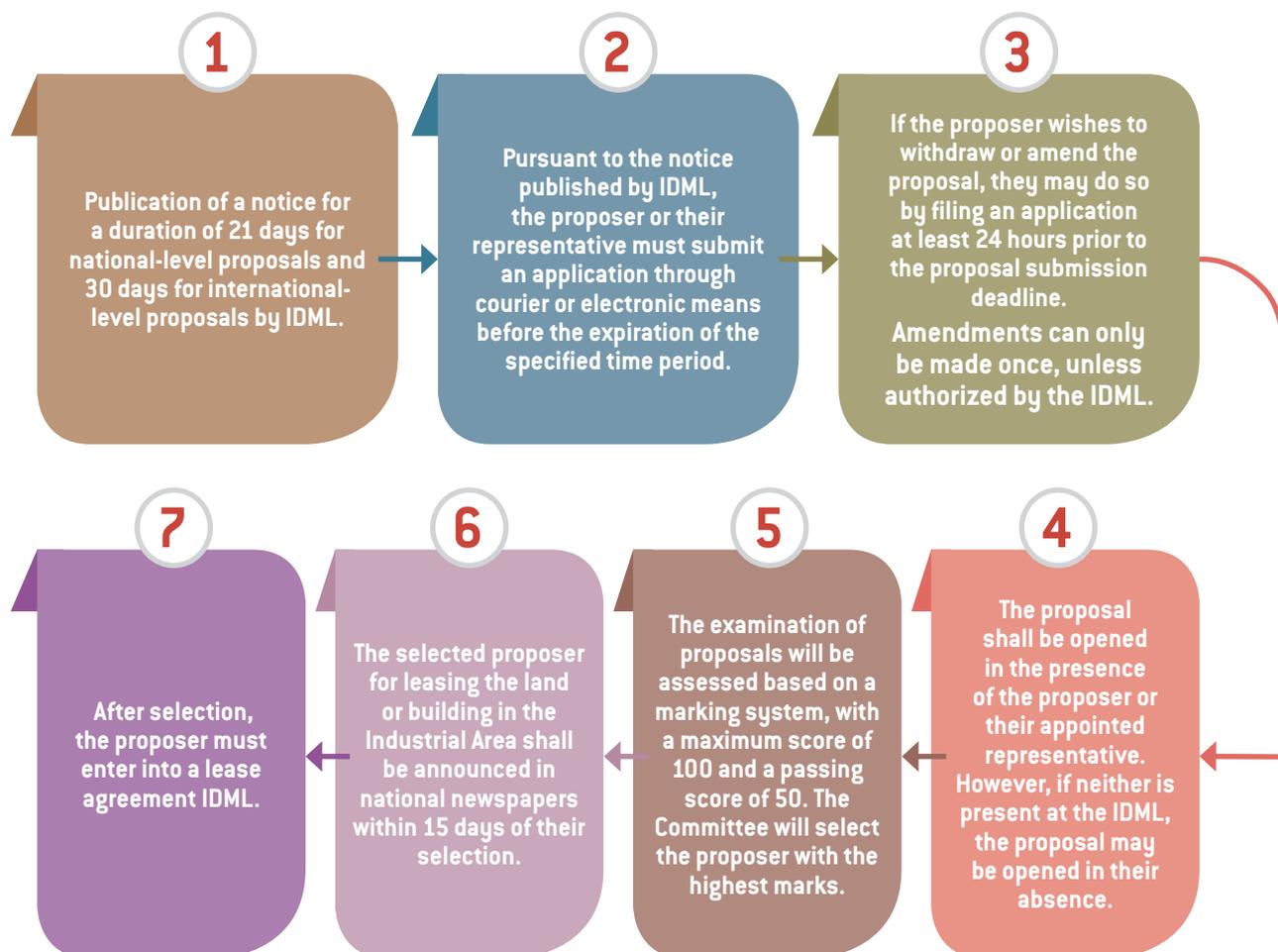
S.No.	Industrial Area/ District
1.	Balaju
2.	Patan
3.	Hetauda
4.	Dharan
5.	Nepalgunj
6.	Pokhara
7.	Butwal

S.No.	Industrial Area/ District
8.	Bhaktapur
9.	Birendranagar
10.	Naubasta
11.	Mayurdhap
12.	Daiji Chhela
13.	Motipur
14.	Gajendranarayan Singh

Apart from that, IDML may buy or acquire any land within the area of Nepal in accordance with the prior approval of MOICS. Likewise, IDML may involve public and private sector or acquire investment by private sector for operation of the Industrial Area/District.

4. What is the procedure for leasing land or building in Industrial Area?

In reference to Chapter 3 of IAOM Regulation, the procedure for leasing land or building in Industrial Area is as follows:



5. What are the basic provisions that must be incorporated in an agreement for leasing of land or buildings in the Industrial Area/ District?

For the purpose of leasing the land in the Industrial Area/ District, the concerned industry is required to execute a lease agreement with IDML. The provisions to be included in such agreement are as follows:

- a. Map along with area of the land or building,
- b. Lease amount,
- c. Purpose of use of the leased land,
- d. Provision on sublet of land or building,
- e. Compliance with the approved standard for building,
- f. Approval for change in structure of the building or warehouse,
- g. Updating information relating to operation, closing and other details as demanded by IDML,
- h. Provision relating to Tax,
- i. Sale of the building or other infrastructure built in the industrial area/ district,
- j. Management of waste,
- k. Dispute resolution,

- l. Confiscation of the property of industry for any due payment,
- m. Extension of time period for operation of work,
- n. Termination of agreement,
- o. Breach of contract,
- p. Control of ownership in name of IDML for land which are not in full operation,
- q. General maintenance of the building except for constructional change shall be done by Industry,
- r. Dispute resolution as per the prevailing law.

6. What are the service and facilities available for industries established in the Industrial Area?

The industry shall be provided with the required infrastructure, water and electricity services for operation of industry in IDML. Apart from that, industry can acquire loan from Banks and Financial Institution (BFIs) by creating securities over the building built for the operation such industry.

7. What are the conditions for clearance of loan against the building leased by the Industry in the Industrial Area?

The clearance of loan by BFIs can be done only against the building built by the borrower industry in their own expenses. The conditions which shall be complied by the BFIs for clearing the dues of the borrower are as follows:

- a. BFIs are required to obtain approval from IDML for the seizure of property held by the industry.
- b. Upon seizure of property by BFIs, BFIs are responsible for paying the applicable bills related to the leased property to IDML.
- c. The BFI must auction the property except for the leased property/ land confiscated from the industry as soon as practicable.
- d. If BFIs fail to do so, IDML will conduct the auction to recover the expenses.
- e. The building and property constructed by the industry will be sold to the industry based on the priority as specified in the IAOM Regulation.

8. What is the tenure of the lease in the Industrial Area and its renewal procedure?

The maximum period of leasing the land or building in the Industrial Area is forty (40) years and it can be further renewed for forty (40) years. The IDML shall provide a notice to industry three months prior to the expiry of the lease agreement. Likewise, the industry is required to submit an application to IDML for the renewal of the lease agreement prior to two months before its expiry.

The industry failing to submit an application for renewal of the agreement within the time specified by IDML shall not have their agreement renewed.

9. For what purposes must an industry take pre-consent from the IDML?

The conditions for which industry is required to obtain prior consent from IDML are as follows.

- a. Name change of the industry;
- b. Change in legal structure of industry;
- c. Amendment on the Objective of the Industry; and
- d. Merger of the Industry

10. Who shall be responsible for insurance of the building in the Industrial Area?

The user of the building is required to obtain insurance for the building in accordance with the current insurance laws. Such user may be the lessee industry.

Chapter 11

BUSINESS ON ENERGY SECTOR

1. What are the benefits of business in hydropower?

Hydropower is universally acknowledged as an economical and sustainable source of energy, offering numerous advantages for businesses. Upon installation, hydropower plants are recognized for their sustainability, entailing minimal operational costs. Furthermore, they boast a non-polluting nature, emitting no heat or harmful gases, thereby contributing to environmental preservation. The technology behind hydropower facilitates reliable and flexible operation, coupled with low maintenance expenses. Additionally, hydropower stations demonstrate enhanced efficiencies and possess extended lifespans, rendering them a prudent investment for businesses seeking long-term energy solutions.

2. What is the prospect of Hydropower generation in Nepal?

The trajectory of hydropower generation in Nepal is deeply entrenched in its historical narrative, tracing back more than a century to its inception in 1911. Despite this longstanding engagement, Nepal's abundant potential in hydropower remains largely untapped. Endowed with over 6,000 perennial snow-fed rivers and rivulets, Nepal's formidable water resources cascade from the Himalayas, offering a plethora of opportunities for hydropower generation. With approximately 1,000 rivers exceeding 11 kilometers in length and nearly 100 stretching beyond 160 kilometers, Nepal's hydrological landscape presents a robust foundation for energy production, boasting a potential capacity of hundreds of thousands of megawatts. While the country's technical potential for hydropower stands at 83 gigawatts, with estimated economically viable around 42 gigawatts as per the country's first technical feasibility report on hydropower prepared in 1960s, advancements in hydropower technology, such as cascade and pump storage projects, have further tremendously bolstered the feasibility of medium and large-scale hydropower ventures, enhancing their viability and efficacy.

3. What is the prospect of power trade between Nepal and India?

The potential for power trade between Nepal and India is underpinned by strategic imperatives and complementary energy profiles. India, a global leader in renewable energy, is characterized by burgeoning industrialization and a burgeoning population, necessitating a relentless quest for energy resources. Conversely, Nepal boasts an immense potential for hydropower generation, aligning with India's burgeoning energy demands. In January 2024, the governments of Nepal and India cemented their commitment to power trade through a long-term agreement, aiming to facilitate the export of 10,000 megawatts of electricity from Nepal to India over the next decade. This landmark agreement

heralds the initiation of a robust power trade relationship between the two nations, with promising prospects for future collaboration. Given Nepal’s unparalleled capacity for harnessing hydropower and India’s insatiable appetite for energy, the trajectory of power trade between the two countries holds immense promise for mutual prosperity and sustainability.

4. Is there any pre-condition for operating Energy Projects in Nepal?

Generation license is pre-requisite for constructing and operating a power project in Nepal. Generally, the license is obtained through the following two-step licensing mechanism in Nepal:

- a. Survey license for generation/transmission/distribution (“Survey License”) and
- b. Construction license for generation/transmission/distribution (“Generation License”).

A developer would generally conduct a pre-feasibility study prior to applying for a Survey License. After obtaining a Survey License, the developer can conduct study and feasibility of the proposed project. Once a Survey License is obtained, the developer conducts technical and environmental studies to determine the feasibility of the power project.

After completing the survey of the project, the developer can apply for Generation License. After obtaining a Generation License, the developer can start construction of the project.

5. What is the term of an Energy related License?

Survey license for generation/transmission/distribution	Construction License for generation/transmission/distribution
5 years	50 years (In practice, 35 years)

6. Which authorities have jurisdiction for issuing Energy related License?

Project Capacity	Authority
Up to 1 MW	Relevant local bodies (Village Municipalities, Municipalities, Sub-Metro Municipalities and Metropolitan Municipalities)
Above 1 MW and up to 200 MW	MOEWRI through DOED
Above 200 MW	IBN

7. What are the means of obtaining Energy related License?

Means of Obtaining Licenses	Description
By applying for license directly to MOEWRI through DOED	A developer can directly apply for obtaining license from MOEWRI through DOED. This means of obtaining license can only be followed for projects with installed capacity up to 200 MW.
Through agreement with GON	GON can also directly enter into an agreement with project developer to provide license to such project developer. This means of providing license has been followed only in few projects. In this process, GON enters into a PDA with the developer. GON may also call for bids from developers to be provide licenses for projects under this means.
By obtaining license through IBN	A developer can obtain licenses from IBN. This means of obtaining licenses can only be followed for projects with installed capacity of more than 200 MW. If a relevant government entity has already identified a project to be carried out through IBN (as PPP project), the developer can obtain license by submitting a bid called for by the relevant government entity. If the relevant government entity has not already identified a project to be carried out through IBN (as PPP project), the developer can obtain license by submitting an application to IBN to carry out the project. IBN enters into a MOU, followed by PDA with the developer and the developer has to apply for licenses in accordance with the terms of such MOU and/or PDA.

8. What are the eligibility criteria for obtaining Survey License for Generation?

A developer must meet the following criteria to obtain survey license for generation:

- i. A developer applying for a survey license must be a corporate entity.
- ii. The corporate entity applying for survey license must be incorporated and registered in Nepal. There are some instances that the survey license has been provided to entities registered outside Nepal, but such survey licenses has been provided with a condition that such survey license should be transferred to a Nepalese entity in a certain period of time.
- iii. The project company applying for survey license must be compliant with the laws of Nepal including but not limited to tax laws, foreign investment laws, and company laws.
- iv. The project company must have a net-worth of NPR 1,000,000 per MW (Nepalese Rupees Ten lakhs per MW).
- v. The project company must have technical ability to construct the project. Such technical capacity can be demonstrated through experience of developers, related shareholders or other personnel related to the project company.

9. What are the eligibility criteria for obtaining Generation License?

A developer applying for generation license should meet the following eligibility criteria:

- i. The developer applying for the generation license must be a corporate entity incorporated and registered in Nepal.
- ii. The project company applying for survey license must be compliant with the laws of Nepal including but not limited to tax laws, foreign investment laws, and company laws.
- iii. The project company intending to hold the generation license must have the net-worth of NRs 10,00,000 (Nepalese Rupees Ten lakhs) per MW.
- iv. If the same project company is applying for more than one project, such project company should have additional net-worth of NRs 10,00,000 (Nepalese Rupees Ten lakhs) per MW.
- v. The project company should apply for generation license within the period of survey license.

10. How can a Power Purchase Agreement be executed?

In Nepal, Nepal Electricity Authority (NEA) is the sole large-scale buyer of electricity. So, the Power Purchase Agreements (PPA) is signed between the developer and NEA and the PPA becomes effective after approval of ERC.

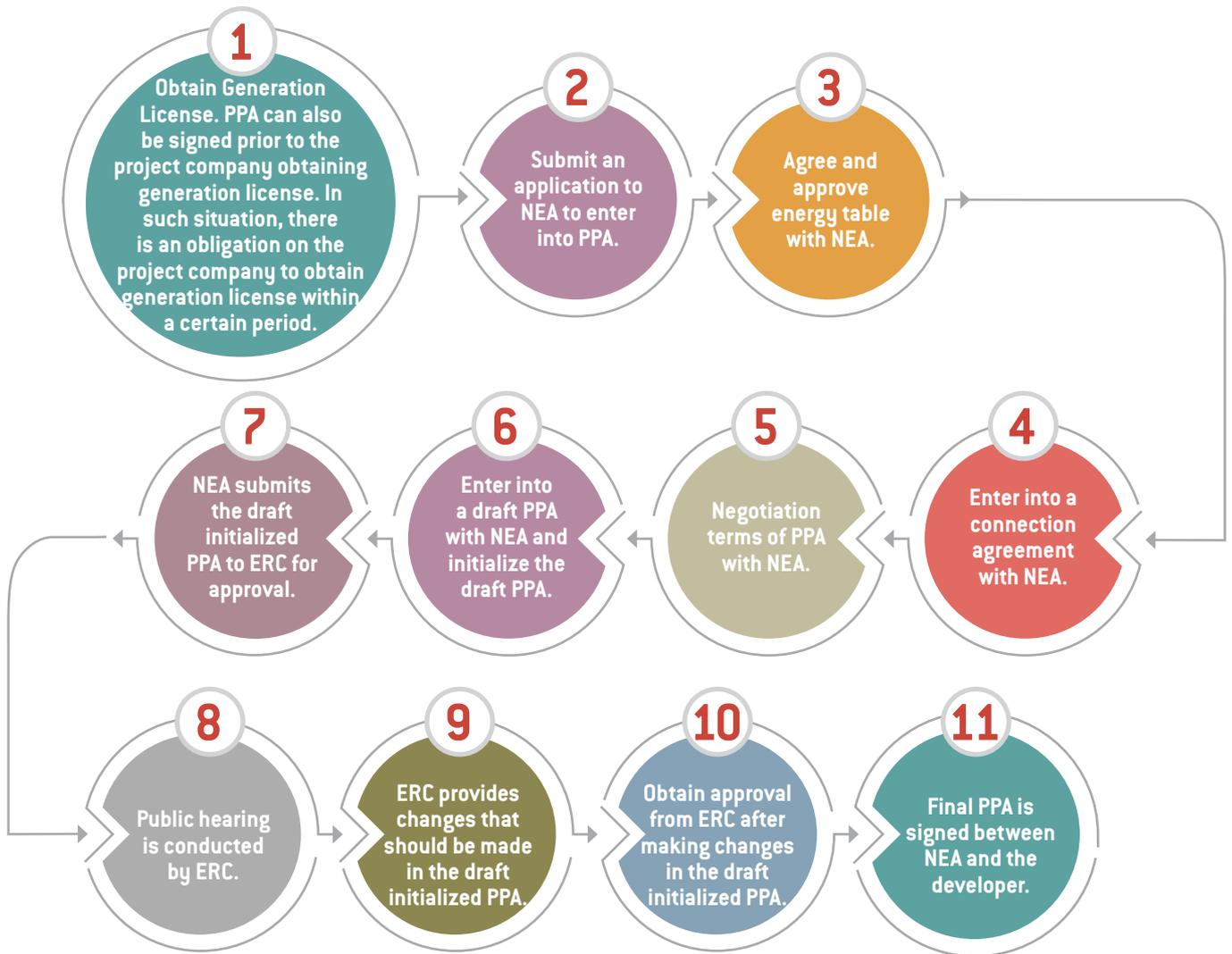


Figure: Process of entering into PPA

11. What is the Electricity Tariff that gets agreed in a Power Purchase Agreement?

The Electricity Tariff agreed in the PPA must be approved by ERC. Electricity tariff that should be agreed in the PPA has been prescribed by ERC in ERC PPA Bylaw 2076. The said Bylaw prescribes the following Electricity Tariff rates:

Electricity Tariff for Run of River Projects	
Dry Season	NPR 8.40 per unit
Wet Season	NPR 4.80 per unit
Rate Revision	PPA Rate to be revised at the annual rate of 3% for a maximum of 8 times (escalation)
Electricity Tariff for Peaking Run of River Projects	

Dry Season	Peaking Hours	Rates
	1 to 2 hours	NPR 8.50
	2 to 3 hours	NPR 8.80
	3 to 4 hours	NPR 9.40
	4 to 6 hours	NPR 10.55
	During Non-Peaking Hours	NPR 8.40
Wet Season	NPR 4.80 during all hours	
Rate Revision	PPA Rate to be revised at the annual rate of 3% for a maximum of 8 times (escalation)	
Electricity Tariff for Reservoir Projects		
Dry Season	NPR 12.40 per unit	
Wet Season	NPR 7.10 per unit	
Rate Revision	PPA Rate to be revised at the annual rate of 3% for a maximum of 8 times (escalation)	

For projects above 100 MW, the tariff prescribed by ERC, as also stated above will be decreased if Return on Equity (ROE) exceeds 17%. Such revision in tariff due to the reason of higher ROE is determined for one time at the start of commercial operation of the project. Hence, if the ROE exceeds 17% after commercial operation date due to any reasons like efficient operation of the project, the tariff rates would not be revised.

12. What are the Major terms in a Power Purchase Agreement?

S.No.	Issue	Terms
1.	Term of PPA	The term of PPA is generally 30 years from COD.
2.	Performance Guarantee	Generally, the amount of performance guarantee is NPR 1 million per MW. Performance guarantee can be forfeited by NEA in these events: If the developer is unable to achieve financial closure within the time stated in the PPA. If the developer is unable to achieve RCOD.
3.	Construction of transmission line	The developer to construct and maintain transmission line up to the interconnection point and NEA to construct and maintain transmission line beyond the interconnection point.
4.	Consequences of Termination	If NEA terminates the PPA in Company Event of Default: Developer shall compensate NEA for any monetary damages incurred by NEA as a direct result to the default. If project company terminates the PPA in NEA Event of Default: NEA shall compensate the project company for any monetary damages incurred by NEA as a direct result to the default.
5.	Dispute Resolution	ERC has insisted in negotiations of PPA that any dispute regarding PPA should be resolved through ERC. However, ERC Act also provides grounds for dispute resolution through any means stated in the PPA.
6.	Delay Liquidated Damages	Delay liquidated damages if NEA fails to construct Interconnection Facilities on time: Amount equal to sale of 25% of the total contract energy for the delay period. Delay liquidated damages if the Company fails to achieve RCOD: Amount equal to sale of 25% of the total contract energy for the delay period.
7.	Take or Pay obligation	If any reduction occurs in delivery of electric energy occurs due to any reason attributable to NEA, NEA shall compensate full Electricity Tariff to the project company for such reduced energy. However, in certain situations, NEA is not obligated to pay compensation, for example, if such event is caused to forced majeure or defined outages. Further, additional conditions are added if the project does not achieve RCOD by fiscal year 2084/85 (2027/28). <i>(The take or pay obligation of NEA was declared in White Paper on Energy, Water Resource and Irrigation, 2075 (2018) which is a policy document. The said white paper states that 'Take or Pay' PPA will be signed for next 10 years (to 2028) on the assumption that 15000 MW electricity will be generated within such time with generation mix of 30-35 % storage hydropower, 25-30 % peaking run of river, 30-35 % run of river and 5-10 % other alternative sources.)</i>

S.No.	Issue	Terms
8.	Non-delivery of Contract Energy	<p>In the event that the electricity output in any contract month is less than 80% of the contract energy, the project company has to pay damages to NEA calculated on the following formula: $(0.8 \times \text{contract energy} - \text{electricity output}) \times \text{electricity tariff}$</p> <p>There is also an obligation to supply at least 30% of energy in the dry season. However, for projects with installed capacity up to 10 MW, the non-delivery of contract energy or availability declaration (whichever is lower) will have to be compensated based on Declaration Deviation Charge (DDC). The formula for determination of DDC will be as follows: $DDC = 0.1 \times [0.9 \times \text{lesser of Contract Energy and Availability Declaration} - \text{Delivered Energy} - \text{Undelivered Energy due to lower dispatch instruction or scheduled outage or forced outage or force majeure or emergency maintenance}] \times \text{Applicable Purchase Rate.}$</p>

13. What is a Project Development Agreement (Concession Agreement) and who has jurisdiction over it?

A Project Development Agreement (PDA) is entered into between the project developer and the government. Generally, PDA can provide additional protections to the investor and project developer thereby making the project more bankable. However, the PDA also imposes additional obligations and/or restrictions on the project developer and the investors.

Projects with installed capacity of more than 200 MW are under the jurisdiction of IBN, with regards to project implementation and projects with installed capacity of up to 200 MW are under the jurisdiction of MOEWRI. For projects with installed capacity of more than 200 MW, entering into a PDA is mandatory whereas projects with installed capacity of up to 200 MW do not have to mandatorily enter into a PDA and is optional to the project developer or investor.

14. What is the process for executing a Project Development Agreement?

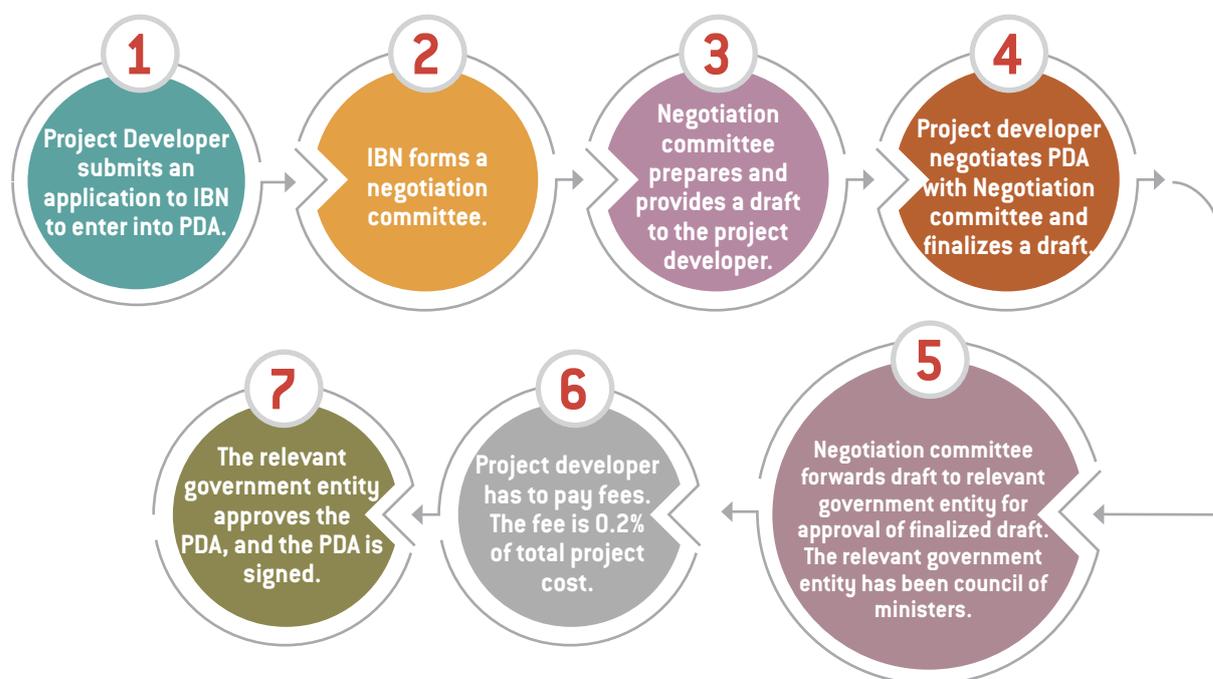


Figure: Process for entering into a PDA for Projects above 200 MW



Figure: Process for entering into a PDA for Projects up to 200 MW

15. What are the additional protections that the project developer/investor can obtain through PDA (Based on previously signed PDAs)

The following protections can be secured through a signed PDA:

- i. **Water Rights:** Rights to use water resources and right against use of water resources for any third party that may impair flow of water for the concerned project.
- ii. **Land Acquisition:** Obligation on GON to procure lease of government lands. In some earlier PDAs, GON has taken obligation to procure private lands for the project if the project developer is unable to procure private lands even after making reasonable endeavors.
- iii. **Government Approvals:** Ensuring that the relevant government entities provide government approvals in timely manner after the project developer validly applies to obtain the approvals to relevant government entities.
- iv. **Extension of term of generation license:** In specific events like force majeure and change in law.
- v. **Government Guarantee:** To ensure or undertake obligation of NEA in the event NEA does not perform its obligations like payment obligations.
- vi. **Force Majeure:** PDA can extend the scope of force majeure events that are provided in the PPA.
- vii. **Change in Law protection:** As the PPA does not provide change in law protection, PDA can provide this protection. It should be noted that the change in law protection used in PDAs does not mean that the project company should not comply with the new laws. Its scope is limited to compensation for costs incurred by the project company.
- viii. **Termination Price/Compensation:** In the event of GON event of default, the termination price is ensured in the PDA. PDA can ensure termination compensation, including Return on Equity, if there is GON Event of Default after commercial operation. PDAs in the past have provided for coverage of debt portion in Company Event of Default as well.

Chapter 12

TAXATION

1. What are the applicable laws governing taxation in Nepal?

The Income Tax Act 2002 (2058) (“ITA”) and the Income Tax Rules 2003 (2059) (“ITR”) deal with the matters related to Direct Tax in Nepal. The laws dealing with matters related to Indirect Tax are as below:

- (a) Value Added Tax Act, 1995 (2052) (“VAT Act”) and the Value Added Tax Rules, 1996 (2053) (“VAT Rules”),
- (b) Excise Duty Act, 2002 (2058) (“Excise Duty Act”) and Excise Duty Rules, 2002 (2059) (“Excise Duty Rules”).
- (c) The Customs Act and Customs Rules also impose customs duty applicable to the import and export of goods to and from Nepal.

The VAT Act and VAT Rules deal with the VAT applicable on the goods and services in Nepal. The VAT Act defines the goods and services that are subject to VAT. The VAT Act has listed certain goods and services in its Annexure-1 as VAT exempt whereas certain goods and service listed in Annexure-2 are subject to VAT at the rate of 0%. The VAT Act prescribes a uniform rate of thirteen (13) percent VAT for all type of transactions.

2. Are there any local taxes applicable?

The local taxes are collected by the municipalities. The local tax includes business registration tax, property tax, rent tax, vehicle tax, advertisement/promotion tax among others.

3. What are the incomes subject to taxation?

The Income Tax applies to the person as well as entities having taxable income i.e. total income less admissible deductions, benefits and concessions in Nepal. Pursuant to ITA the income derived from (a) employment, (b) business, (c) investment or (d) windfall gain, are subject to taxation.

4. What are the prevailing tax rates applicable to business entities?

Broadly, the Income Tax Rates applicable to Business Entities are as follows:

Industries	Prevailing Tax Rates
Manufacturing Industries and Hydropower Industries. Income earned from operation of Special Industries, construction and operation of Roads, Bridge, Tunnel, Rope-Way, Fly overs and operation of Trolley Bus or Tram; Income earned by Cooperatives registered under Cooperatives Act 2017 from transactions other than tax exempt transactions Income earned from export The taxable income of an entity engaged in such projects to build, own, operate and transfer (BOOT) the public infrastructure to the GON	20% (Concessional Tax Rate)
General Corporate Tax	25%
Industries relating to Cigarette, Tobacco, Cigar, Liquor, Beer, Banks, Financial Institutions, General Insurance Business, Entities engaged in financial transactions, Petroleum and businesses relating to Telecommunication and Internet Service, Money Transfer, Capital Market, Stock Exchange, Merchant Banking, Commodity Future Market, Stock Exchange and Commodity Broker Business.	30%

5. What are the rates of tax applicable to natural persons?

The resident natural persons are subject to income tax at the rate of 1% to 36% based on his/her annual income.

6. What are the withholding taxes applicable to businesses?

The withholding tax/tax deducted at source (TDS) applicable to businesses is as follows, and is subject to changes made by annual Fiscal Act.:

Income Head	Rate of TDS
Service Charge / Fees	15% Companies registered in VAT are subject to TDS at 1.5%.
Interest	15% in general condition 10% (In case of the interest is paid by Nepalese banks to the foreign financial institutions) 5% (In case of the interest is paid to foreign BFIs in foreign currency for reservoir and semi-reservoir-based hydroelectricity projects of more than 200 MWs for which financial closure will be completed by end of Chaitra 2082.)
Royalties	15%
Dividends	5%
Repatriation of income by permanent establishment	5%
Windfall Gain	25%
Interest payment on loans taken for from foreign BFIs in foreign currency by	

Withholding of Capital Gain Tax on Shares

Nature of Entity	Nature of Seller	Gain from Sale of Shares to be Withheld by Entity
Listed Company	Resident Natural Person holding shares for less than 365 days	7.5%
	Resident natural person holding shares for more than 365 days	5%
	Resident Company	10%
	Non Resident Natural Person/Company	25%

Unlisted/Private Company	Resident Natural Person	10%
	Resident Company	15%
	Non Resident Natural Person/Company	25%

The TDS on dividend is considered as final withholding tax. Similarly, the payments made to non-resident persons after deducting the applicable taxes on royalties or interest are considered final withholding tax. Therefore, no additional tax is payable in Nepal once the TDS is withheld.

7. What are the tax incentives available to entities?

The ITA has provided tax incentives on different criteria. The tax incentives are provided on the basis of:

- Nature of industry,
- Number of employees,
- Location of industry, and
- Business vehicle such as listed company or non-listed company etc.

Following is the list of incentives provided under ITA. If a person who is in a position to have more than one exemption in respect of the same income under Sec 11 of ITA, such person is entitled to enjoy only one exemption chosen by him/her. The incentives noted below are subject to amendment by the Finance Act each year.

The following are the major incentives provided under the ITA and should not be treated as exhaustive.

A. Nature of Industries:

Industries	Incentives
Persons commencing commercial operation or production of mines and exploration of petroleum, natural gases and fuel by April 12, 2024 A.D.	100% exemption on income tax up to first 7 years of commercial operation of business and 50% income tax for the period of 3 years thereafter
Person or entity having license commercially generates, transmits or distributes electricity generated by hydropower, solar, wind or bio- materials by April 14, 2028, A.D.	100% exemptions on income tax for the first 10 years and 50% exemptions for the next 5 years.
Income derived by a reservoir or semi reservoir-based hydropower projects generating above 40 MW of energy and managing financial closure by April 15, 2029, A.D and cascade hydroelectric projects that are operated in tandem with those projects.	100% exemptions on income tax for 15 years and 50% for the next 6 years
Tourism Industries or the airlines company operating international flights established with the investment of above NRs 1 billion	100% exemption on income tax up to first 5 years of operation of business and 50% income tax for the period of 3 years thereafter.
Tourism Industries or the airlines company operating international flights established with the investment of above NRs 3 billion	100% exemption on income tax up to first 10 years of operation of business and 50% income tax for the period of 5 years thereafter.
Tourism Industries or the airlines company operating international flights established with the investment of above NRs 5 billion	100% exemption on income tax up to first 15 years of operation of business.
Industries producing and processing local tea, Dairy Industries and Textile Industries	50% exemption in the rate of tax in the income earned through selling of their manufactured products
Micro Enterprise	100% exemption on income tax up to first 7 years of operation of business. 100% exemption for additional 3 years in case such industry is operated by women industrialists.

Income earned in foreign currency by providing following information technology-based services, (i) Business Process Outsourcing (ii) Software Programming (iii) Cloud Computing.	50% tax exemption is applicable till the FY 2084/85.
Income derived from agriculture business, vegetable dehydration business and cold storage business by registered firm, company, partnerships, and organized institutions	50% tax rebate on applicable tax amount

B. Number of Employees:

Sectors	Entities	Incentives
Special and IT Industries providing direct employment to	100 or more Nepalese nationals throughout the year	The tax is applicable only 90% of the applicable rate in such income year
	300 or more Nepalese nationals throughout the year	The tax is applicable only 80% of the applicable rate in such income year
	500 or more Nepalese nationals throughout the year	The tax is applicable only 75% of the applicable rate in such income year
	1000 or more Nepalese nationals throughout the year	The tax is applicable only 70% of the applicable rate in such income year
	100 or more Nepalese nationals throughout the year including 33% women, Dalits or handicapped	Additional 10% exemption in applicable rate

C. Location of Industry:

Location	Exemption/Concessions
Special Economic Zone	100% tax exemption on dividend distributed for the first 5 years from the commencement of the business and 50% exemption for the next 3 years
	50% of income tax on income generated through service charge or royalty for technology transfer or management services provided by a foreign investor
Special Economic Zone in Himali or any Hilly Districts notified by GON (No such districts are notified as of now)	100% of income tax for the first 10 years from the date of commencement of the business and 50% exemption for the following years.
Established in other than those in Himali and Hilly Districts notified by the GON	100% of income tax for the first 5 years from the date of commencement of the business and 50% exemption for the following years.
Special Industries established in Least Developed, Undeveloped and Under Developed Regions	The tax is applicable at 10%, 20% and 30% of the applicable rate respectively for up to 10 years from the date of commercial operation.
Special Industries located in Karnali province or hilly district of Far western province providing employment to more than 100 Nepalese nationals	100% tax exemption for 15 years
Fruit based cider and wine industries established in Least Developed and Undeveloped Regions	40% and 25% income tax exemption respectively for the first 10 years from commercial operation
Industries relating to software development, data processing and cyber cafe, digital mapping established inside Technology Park, Biotech Park and IT Park specified in Nepal Gazette.	50% exemption in applicable tax rate in the income of such industries

D. Listed/Non-Listed Companies:

Industries	Incentives
Manufacturing, tourism service, hydropower production, distribution and transmitting industries listed in the stock exchange	Additional 15% exemption on applicable tax.
Private Company having paid up capital of 500 million or more, if it converts into Public Company	10% exemption in applicable tax for 3 years from the date of such conversion

Note: Special Industry refers to a manufacturing industry, industry based on agriculture and forest products and minerals industry as classified in Section 15(2) of the IEA, except for industries producing cigarette, bidi, cigar, tobacco, khaini, liquors or manufacturing other products of the same nature involving tobacco as the main raw materials, liquors, beer and products of similar kind.

8. What is the tax administration mechanism under the prevailing laws?

The tax system of Nepal is Self-Assessment system whereby the taxpayers themselves assess their income and pay the applicable taxes. The tax authority can reassess the income of the taxpayer within 4 years from the date of submission of income return except in the case of fraud for which no time limitation is applicable. The tax authority may impose fine, fee and interest and include the same in income tax obligation payable by the taxpayer. The taxpayer may challenge the reassessment made by the tax authority by submitting a petition for administrative review before IRD. The IRD reviews the petition as well as the reassessment and decides on the matter. The decision of IRD can further be challenged through appeal before Revenue Tribunal. The decision of the Revenue Tribunal may be appealed before Supreme Court which is subject to leave for appeal granted by the Supreme Court.

9. What are the anti-tax avoidance mechanisms under prevailing laws?

The ITA and VAT Act prohibit tax avoidance mechanisms in Nepal. Both the ITA and VAT Act provide general rules against tax avoidance. These legislations allow the Inland Revenue Department (“IRD”) to re-characterize the tax arrangements in order to determine the Tax Liability.

10. When is the VAT registration required in Nepal?

The VAT Rules provide the threshold of the transaction that triggers VAT registration. Pursuant to the VAT Act and VAT Rules the threshold of VAT registration is as follows:

Nature of Business	Annual Transaction
In case of a person that transacts goods	Above NRs 5,000,000 (Nepalese Rupees Five Million)
In case of a person that provides services	Above NRs 2,000,000 (Nepalese Rupees Two Million)
In case of a person that transacts both goods and services	Above NRs 2,000,000 (Nepalese Rupees Two Million)

However, the firm or company whose transaction volume does not trigger the said threshold can also choose to get registered at VAT.

11. What the VAT rates in Nepal?

The VAT Act prescribes a uniform rate of VAT for all type of transactions. The current VAT rate is thirteen (13) percent of the price of goods and services subject to VAT.

The VAT Act also specifies the goods and services to which the VAT is charged at Zero rate. The list of goods and service on which the VAT applies at Zero rate have been included in Schedule-2 of the VAT Act. For example: VAT is chargeable at Zero rate on export of goods and services. There are certain goods and services exempted from VAT. The lists of such goods and services are given in Schedule -1 of the VAT Act.

12. VAT Refund and Procedure of VAT Refund

The concerned tax office can make VAT refund on the following grounds:

- 1) In case a taxpayer is unable to adjust the outstanding amount from receivables for the amount paid in VAT for the consecutive 4 months.
- 2) In case taxpayer makes 40% sales out of the total sales that the taxpayer can adjust the outstanding amount from receivables for the amount paid in VAT for the specific month.
- 3) If the taxpayer is required for VAT refund for diplomatic services under Section 25 of the VAT Act.
- 4) If the price of any consumable goods or service purchased is paid through electronic mode of payment pursuant to the prevailing laws, ten percent of such payment shall be refunded to his or her bank account.
- 5) Any tax amount submitted by mistake.
- 6) Refund of tax to foreign tourist for purchase of goods of more than Twenty-Five Thousand Rupees
- 7) VAT applicable on re-export of goods from Nepal
- 8) Refund of VAT paid during purchase of raw materials, auxiliary raw materials and packaging materials used for manufacture of medicines from domestic industry.

13. Process of VAT Refund

- 1) A person shall file an application for a refund before the concerned tax office. The tax office must refund the determined VAT refund within sixty days of date of application for condition under Clause 12(1), Clause 12(5), Clause 12(4) and within thirty days for condition under Clause 12(2), Clause 12(8).
- 2) For refund of VAT to the diplomatic entity and diplomats under Clause 12(3), the taxpayer shall make application to tax office for refund of VAT paid for goods or services purchased from firms or companies (refund shop) listed in the Department. The refund shall be made within three days from the relevant tax office. However, the VAT will not be refunded for single purchase of taxable goods or services for less ten thousand rupees.
- 3) However, the application must be made to the Inland Revenue Department for refund of VAT to an unregistered person.

14. Time Limitation for VAT refund

The concerned taxpayer must file application for VAT refund within 3 years from the date of end of tax period for which the refund is claimed.

15. Does Nepal have Double Taxation Treaty with India?

The GON and Government of the Republic of India have entered into a Double Tax Avoidance Treaty (“DTAA”). The current DTAA, the Agreement Between the GON and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income 2011, was entered into on Nov. 27, 2011 and was effective to Nepal from July 16, 2012. The

DTAA sets out mechanisms for avoidance of double taxation and fiscal evasion. The DTAA refers to ITA for the taxes that may be imposed in Nepal under the DTAA. It means that the DTAA imposes tax on the income derived from (a) business, (b) investment, or (c) employment. The DTAA defines the rule of taxing authority as to which country to tax on the basis of source of income and business activities. The major head of income, rate of tax and taxing authority under the DTAA is briefly provided in the following table.

S.N.	Heads	Rate (up to)	Applicable Jurisdiction
1	Dividends	5% if the beneficial owner is a Company holding at least 10% of the shares of the Nepali Entity 10% in all other cases (Rate Applicable in the Contracting State e.g. Nepal)	Both India and Nepal
2	Interest	10% if the beneficial owner of the interest is the resident of the other contracting state (Rate applicable in the Contracting State, e.g. Nepal)	Both India and Nepal
3	Royalties	Cannot exceed 15% of the gross amount of royalties if the beneficial owner of the royalties is the resident of the other contracting state (Rate applicable in the Contracting State e.g. Nepal)	Both India and Nepal
4	Permanent Establishment	5% in case of the repatriation of the profit. 25% or 30% depending upon the nature of industry. (In Nepal as per ITA)	Country where PE is established.
5	Business Profits	25% or 30% depending upon the nature of the industry. (In Nepal as per ITA)	Country of the incorporation of the company.
6	Capital Gains		Both India and Nepal



Chapter 13

REPATRIATION OF INVESTMENT AND RETURNS

1. What earnings can an Indian investor repatriate?

An Indian investor is allowed to repatriate:

- i. earnings through dividend or through sale, proceeds against investment in shares,
- ii. profit or dividend received from foreign investment,
- iii. in the event of dissolution or liquidation of industry or company, residual amount after payment of all liabilities,
- iv. amount in respect of royalty received under technology transfer,
- v. lease rent under the lease investment,
- vi. damages or compensation, if any, received from the final settlement of a law suit, arbitration or any other legal process in Nepal
- vii. Amount that can be repatriated in accordance with the prevailing law.

2. Can an Indian investor repatriate cent percent return or investment?

Yes. There is no capping on the amount or percentage that an Indian investor can repatriate in terms of sale proceeds, dividend, principal and interest. However, an investor must pay all the taxes as may be leviable before repatriating such amount.

3. Is government approval required for repatriation?

A prior approval from DOI and NRB is required for repatriation. Based on the sector specific industries such as hydropower project or non-industrial sectors such as Banks and Financial Institutions, Insurance, Telecommunication sector approval from the concerned authority for repatriation of investment is required.

4. What are the key requirements to be fulfilled for repatriation?

Following are the key requirements that need to be satisfied for repatriation:

- (a) **Lock-in-period:** Generally, a lock-in-period of one year is applicable to investment made in the form of shares. This means that the Indian Investor will not be able to sell its shares within 1 year from the date when Indian investor becomes a shareholder of Nepalese company. In the

case of listed companies, the lock-in period applicable to the promoter or other category of shares (except public shares) is prescribed as three (3) years, contrary to the 1 year lock-in period specified in the commitment letter for approval.

- (b) **Valuation requirement:** In the case of a listed company, only listed price of the shares can be repatriated. However, for unlisted shares, fair value amount of the shares of the company is required to be determined by a Chartered Accountant. Such valuation is required to be conducted in accordance with the Nepal Financial Reporting Standards.
- (c) **Payment of tax:** For all forms of repatriation, applicable tax is required to be paid and the tax payment slip will need to be submitted to NRB.
- (d) **Submission of documents:** An application for repatriation will need to be submitted to NRB along with all the documents prescribed in the NRB Bylaw. The Bylaw provides the document which must be submitted while obtaining approval for foreign exchange on repatriation of the earnings or amount sent to Branch Office.
- (e) **Government approval:** Recommendation from the DOI and prior approval from NRB will be required. NRB will grant approval for repatriation only if prior investment was duly recorded as foreign investment with NRB.

It may take from 2 to 4 weeks to secure NRB approval for repatriation. Repatriation is not subject to any governmental fees.

5. Can Indian nationals working in Nepal repatriate income made from Nepal?

Yes, any Indian nationals generating income in Nepal from employment can repatriate up to 70 % of their salary and benefits after tax to their own country. They can repatriate the entire amount of provident fund or retirement fund after tax. However, if the Expatriates wants to repatriate the amount borrowed from such funds during the term of his/her employment, then s/he can repatriate up to 70% of such amount borrowed.



Chapter 14

EXITING FROM BUSINESS

1. How can an Indian investor divest its investment?

The manner in which an Indian investor can divest its investment in a company is dependent on the nature of the company (i.e., listed company or unlisted company) that has been invested in. Divestment of shares is widely done through two separate routes:

- i. Divestment of shares of listed companies and
- ii. Divestment of shares of unlisted companies.

Divestment of shares of listed public companies, meaning public companies listed in the stock exchange, involves the sale of securities through Nepal Stock Exchange (“NEPSE”).

Shares of unlisted public companies and private companies are generally divested by selling the shares that the investor owns in the company. The sale of shares of unlisted public companies is done through the Over the Counter (“OTC”) market where transactions occur between individuals through a broker.

2. What are the requirements to be fulfilled for divestment in an unlisted company?

The requirements applicable to repatriate investment have to be fulfilled in order for an Indian investor to exit. Please refer to the Chapter on Repatriation for the requirements to be fulfilled.

3. What are the general procedures for sale of the shares by the Indian investors?

The general procedures for sale of the shares by the Indian investors are as given below:

a. Divestment of shares of a private company

A private company is not allowed to sell its shares and debentures publicly. Generally, memorandum of association or articles of association of the private companies provide for right of first refusal to be given to the existing shareholders before approaching to the third party buyer. Transfer of shares of a private company is subject to an approval of the Board of Directors. Approvals from DOI and NRB, along with the concerned sectoral regulatory bodies in many instances, are also required to sell shares of private companies with foreign investment.

The process of divestment of shares in private companies is pictured as follows:

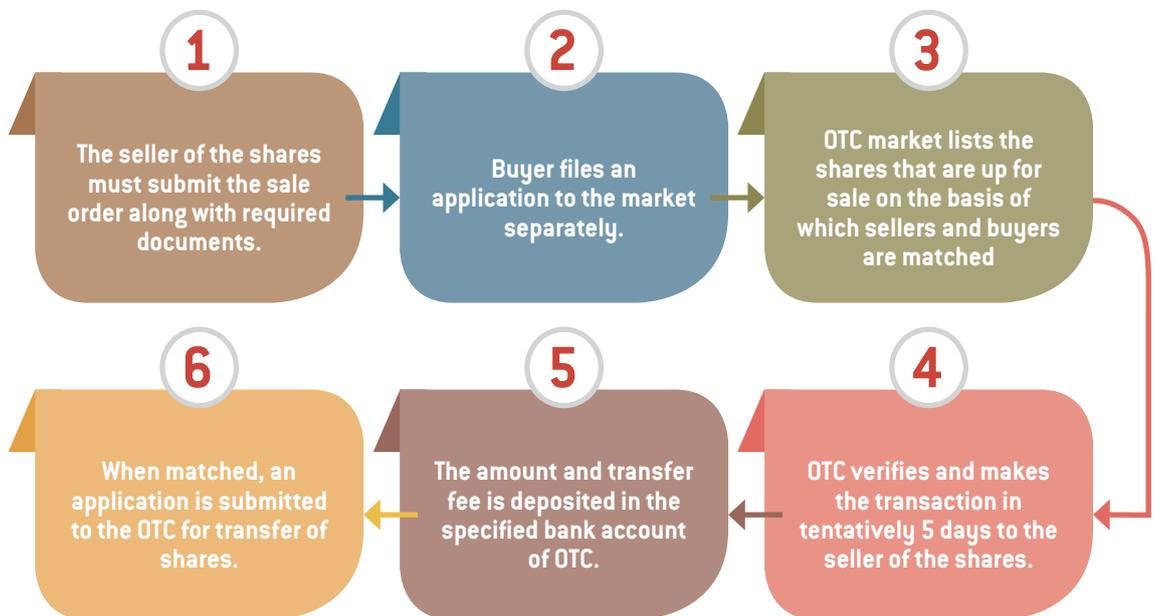


Figure: Process of divestment of shares in Private Company

b. Divestment of shares of unlisted public companies

i. Divestment of Shares through OTC market

Shares of the unlisted public companies can be transferred through the OTC market in the following manner:



Transfer of shares of unlisted public companies is also subject to DOI and NRB approval as with divestment of shares of private companies. The transfer has to then be recorded with OCR.

ii. Transfer through put option

If the shareholders agreement or other relevant agreement provide for put option rights, the shareholder of an unlisted company may also exercise put option against the identified shareholders to sell their shares at a specified price within a specified time. The price of the shares when exercising put option is required to be consistent with the valuation of shares during transaction.

c. Divestment of shares of public listed companies

Indian investors can exit from their investment in public listed companies in two ways: (i) by selling shares through the securities market i.e., NEPSE and (ii) through bulk transfer of shares.

i. Selling shares through the securities market

Indian investors can exit by selling their shares through NEPSE. Shares through NEPSE are sold at a specified listed price, and the buyer is assigned at random amongst those interested to buy shares. Both the buyer and seller need to appoint stock brokers. Neither the company nor the shareholder has a choice on who buys the shares. Approval from DOI and NRB is required to sell shares held by the Indian investor.

ii. Bulk transfer

The bulk share means at least one (1) percent of the paid-up capital of the company or holding shares worth over NPR 50,000,000/- (Nepalese Rupees Fifty Million Only) - whichever is the higher amount. The Indian investor can sell bulk shares by issuing offer document with the approval of the Securities Board of Nepal. Such a transfer of shares allows for the seller to determine the selling price and the buyer of those shares.

4. Can redeemable preference shares be redeemed and investment be paid back to Indian investors?

Yes, investors who have participated in the share capital of the company by means of preferred equity, can redeem their preferred shares at the end of the redemption period. The conditions of issue will need to specify the redemption at the time of issuance of the preferred shares. Such redemption can only be paid back out of:

- (i) the amount available as distributable profits, or
- (ii) amount collected in the redemption account through fresh issue of securities.

5. Is buy-back of shares permitted?

Yes, but subject to satisfying legal and financial criteria.

Buy-back of shares refers to the repurchasing of the shares of a company that had issued the same to its shareholders earlier. While it is generally prohibited, buyback can be undertaken under certain specified preconditions.

In order to buy back shares, the subscribed capital of the company has to be fully paid and is permitted only if there are amounts available as distributable profits. Additionally, corporate approval in the form of special resolution of the shareholders permitting buy back from the general meeting is also required. It has to be ensured that the ratio of total debt to the sum total of the paid up capital and free reserves will not exceed 2:1 after the buyback of shares.

Generally, the full buy-back of shares held by particular shareholder will not be feasible given the requirement that the Company cannot buy back entire issued shares and buy-back of shares will need to be done proportionately.



Chapter 15

DISPUTE RESOLUTION AND GOVERNING LAW

1. What are the laws governing dispute resolution in Nepal?

Generally, disputes are resolved in two ways: (a) Courts and Tribunals or (b) Arbitration. The Constitution of Nepal, the Administration of Justice Act, 2016 (2073), the Supreme Court Act, 2016 (2073), the Supreme Court Regulations, 1992 (2049), the High Court Regulations, 2016 (2073), District Court Regulations, 2016 (2073), Country Civil Procedure Code, 2017 (2074), Country Criminal Code, 2017 (2074), Country Criminal Procedure Code, 2017 (2074) deal with judicial proceedings in regular courts. The matters relating to arbitration is primarily governed by the Arbitration Act, 1998 (Arbitration Act) and Arbitration (Court Procedures) Rules, 2002 in Nepal.

2. What is the court system in Nepal?

- 2.1 The Constitution of Nepal provides for three tiers of courts in Nepal (a) Supreme Court, (b) High Court, and (c) District Court. There are currently seven (7) High Courts and Seventy-Seven (77) District Courts such that each province has one High Court and each district has one District Court.
- 2.2 The District Court acts primarily as the court of first instance. It also hears habeas corpus petition and injunctive petitions within its territorial jurisdiction.
- 2.3 The High Court hears appeals against the order or final judgment given by the District Court within its territorial jurisdiction. The High Court also acts as the court of first instance on certain matters. For example, the Commercial Bench formed in the High Court tries certain matters under the Companies Act, 2006 (2063), Insolvency Act, 2006 (2063), Secured Transaction Act, 2006 (2063) etc. as court of first instance.
- 2.4 The Supreme Court is the highest court in Nepal which is also the court of record. The High Court and Supreme Court also hear writs of habeas corpus, mandamus, certiorari, prohibition, and injunction and quo warranto.
- 2.5 There are specialized courts, judicial bodies and tribunals that try specific types of cases in Nepal. The specialized courts include (a) Special Court, (b) Administrative Court, (c) Revenue Tribunal, (d) Labour Court, etc. There are certain other quasi-judicial bodies that also exercise judicial powers in Nepal. Such quasi-judicial bodies include (a) District Administration Office (DAO), (b) Land Revenue Office (LRO), (c) Department of Industry (DOI), (d) Beema Samiti (Insurance Board) etc.

2.6 Generally, it takes 6 months to 1 (one) year to settle any dispute in the District Court, 1 (one) to 1.5 (one and half) years in the High Court and two (2) to four (4) years in the Supreme Court.

3. What is the Appeal Mechanism in Nepal?

3.1 Generally, the district court being a court of first instance has the power to try and settle all the cases within the relevant district. However, it holds the power to hear appeal against the decision or final order made by certain quasi-judicial bodies within its territorial jurisdiction. High Court hears the appeal in the cases including but not limited to

- (a) cases tried and settled by District Court under its territorial jurisdiction,
- (b) cases decided by certain quasi-judicial bodies such as the DOI on industrial property matters, Insurance Board on insurance claim matters within its territory.

3.2 Supreme Court has the power to hear appeal in the cases including but not limited to

- (a) cases tried and settled by High Court as court of first instance,
- (b) cases in which punishment of imprisonment imposed is ten (10) years or more,
- (c) the decision of the lower court reversed in full or part by the High Court if it meets certain threshold of sanctions or amount in dispute and
- (d) other cases in which appeal can be filed before Supreme Court pursuant to the federal laws.

The cases which are not subject to appeal can be appealed to the Supreme Court subject to the leave for appeal granted by the Supreme Court. The Supreme Court also reviews its own decision on certain circumstances as per the petition filed by the litigating party.

4. Where can the case be filed?

The court in which the case can be filed depends on the nature of the dispute. Generally, the case can be filed as follows:

S.N.	Nature of Dispute	Court	Remarks
1	Immovable property	Relevant District Court where the property is located.	-
2	Other dispute except for immovable properties.	Either in the district court where the transaction was executed or where the defendant is residing.	In case the number of defendants is more, the place where the majority is residing.
3	Transaction entered into third district [not in the residence of the plaintiff or the defendant]	Either in the District Court where the transaction was made or where defendant is residing.	-

For instance:

- a. If a company registered in Kathmandu has a dispute relating to a property situated in Bhaktapur, then the case should be filed at the Bhaktapur District Court (location of the property).
- b. If a company registered in Kathmandu has a contractual dispute with a Company registered at Lalitpur, then the case should be filed at either Lalitpur District Court (Location of the party) or the District Court where the contract was executed.

5. What types of disputes can be referred to arbitration?

The disputes that are commercial in nature can be referred to arbitration for settlement. If there has been any arbitration agreement between the parties in dispute, then the dispute should be referred to the arbitration. The Arbitration Act provides for the arbitration proceedings. The courts of Nepal do not hear any commercial disputes so far as there has been an arbitration agreement.

6. How is the dispute related to foreign investment settled?

- 6.1 FITTA provides for the mechanism to settle disputes relating to foreign investment. Disputes arising between a foreign investor and local investor are required to be settled by mutual consultations in the presence of the DOI. If such dispute could not be resolved within 45 days from the date of origin of dispute, the dispute will be solved as per joint investment or dispute resolution agreement, if any. Furthermore, if such disputes cannot be settled in DOI or if there is no arrangement to resolve dispute in the agreement between parties, the dispute will be resolved through arbitration as per Nepalese law related to the arbitration or in accordance with the prevailing UNCITRAL Rules. The arbitration is held in Kathmandu and the laws of Nepal apply to the arbitration. If the party to the dispute fails to resolve dispute or agreement is felt insufficient, parties may make agreement to solve the dispute even after dispute arises and such agreement made should be informed to the body registering industries.
- 6.2 The dispute related to public procurement is settled pursuant to the Public Procurement Act, 2007. Any dispute arising between the public entity and the construction entrepreneur, supplier, service provider or consultant in connection with the procurement contract is to be settled amicably. A procurement contract may provide arbitration if the dispute cannot be settled amicably.

7. What is the mechanism for the recognition and enforcement of foreign arbitral award?

- 7.1 The foreign arbitral award is enforced in Nepal in two conditions, viz.
 - (a) if Nepal is party to any treaty related to enforcement of foreign arbitral award, and
 - (b) the award is rendered in the territory of the party to that treaty subject to the conditions set out at the time of being party to that treaty.
- 7.2 Nepal is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Award 1957 (“New York Convention”). Nepal has ratified the New York Convention with such declarations that it enforces the foreign arbitral award
 - (a) on the basis of reciprocity and
 - (b) given on disputes commercial in nature under the law of Nepal.

The Arbitration Act sets out the conditions to be satisfied for the enforcement of foreign arbitral award in Nepal. Upon the satisfaction of such conditions the foreign arbitral award can be enforced in Nepal.

- 7.3 The petition for enforcement of foreign arbitral award should be submitted to the High Court. The High Court can forward the foreign arbitral award to the District Court if it is enforceable.
- 7.4. Both India and Nepal are signatory to the New York Convention which obliges the countries to recognize the foreign arbitral award on the basis of reciprocity. In the context of India, we understand that only 48 countries have been notified by the Central Government of India as reciprocating countries, which does not include Nepal. Therefore, Nepal is not obliged to enforce the Indian arbitral award on the basis of reciprocity.

8. Is there any restriction to the enforcement of foreign arbitral award?

Yes, the Arbitration Act provides the situations in which the enforcement of foreign arbitral award is rejected even if the award satisfies other criteria. The situations include:

- a) The award is rendered in a matter which is not subject to arbitration under the laws of Nepal.
- b) In case the enforcement of the award is detrimental to public policy.

9. How is a domestic arbitral award enforced?

- 9.1 The parties are required to enforce the arbitral award within 45 days from the date of receiving the copy of the award. If the party does not implement the award, the other party may file an application to the concerned District Court for the enforcement of the arbitral award. The application should be filed within 30 days from the date of expiry of the initial 45 days. The arbitral award can be challenged before the High Court. The Arbitration Act provides few grounds which permit the party to challenge the arbitral award before the High Court. The High Court may either set aside the award or pass an order for re-arbitration.
- 9.2 The petition to challenge the award may be filed before the High Court within thirty-five (35) days from the date of the receipt of the award or the notice received thereof. The parties not satisfied with the decision of the High Court may again file a writ petition to the Supreme Court.

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A Handbook for
Indian Investors

Investing in Nepal

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