

Foreign Investment & Technology Transfer Regulations



(FITTA)

HIGHLIGHTS





Table of Contents

1. Forms of foreign investment (Rule 3 & 4)	2
2. Applying for foreign investments (Rule 8)	2
3. Period of injecting the foreign investment (Rule 9)	2
4. Foreign investment through establishment of branch office (Rule 6)	3
5. Foreign investment in industry registered in province (Rule 24)	3
6. Reinvestment from profits earned by a foreign investor (Rule 22)	3
7. Ceiling on royalty and other fees (Rule 5)	3
8. Escrow agreement to be recorded (Rule 7)	3
9. Information of sale of shares or transfer of rights (Rule 10)	4
10. Repatriation of investments and returns (Rule 11)	4
11. Facilities	4
12. Recommendation, coordination and facilitation for acquisition of land (Rule 14)	5
13. Cancellation of the approved foreign investment (Rule 17)	5
14. Contract manufacturing (Rule 21)	5

HIGHLIGHTS OF

FOREIGN INVESTMENT AND TECHNOLOGY TRANSFER REGULATIONS 2077

Nepal Government, within the rights conferred by section 51 of the Foreign Investment & Technology Transfer Act 2075 (FITTA), has formulated the Foreign Investment & Technology Transfer Regulations, 2077 on 11 January 2021. The major highlights of the much awaited regulations are given hereunder:

1. Forms of foreign investment (Rule 3 & 4)

Foreign investors can make foreign investment in Nepal by acquisition of properties in any Nepalese industry, except those prohibited by the FITTA, or acquisition of shares up to 100% in such industries. Investment can also be made through lease of aircraft, shipping line, machinery, construction equipment, etc., as specified in section 6 of the FITTA in convertible currency equivalent to Rs 50 million or more, the minimum threshold for foreign investment in Nepal.

2. Applying for foreign investments (Rule 8)

Any foreign investor willing to invest in any permitted industry in Nepal shall submit an application in the standard format along with the following documents to the approving authority in hard copies or through electronic medium.

- Investment report and project report - 2 copies
- Joint venture agreement, if more than one investor

- Copy of the personal biodata, if individual investor
- Legal documents of investor, profile and board resolution in case foreign investor is a company
- Legal documents, partnership agreement, profile of firm and partners' decision in case of partnership firm
- In case of NRN, documents to support of NRN
- Charter documents and documents revealing identity of directors in case of international organization
- Power of Attorney in case the foreign investor cannot be present in person. Where POA is issued, the responsibilities and period of validity of the POA has to be specified (Rule 23)
- Any other documents that is requested by the approving authority

The approving authority, after reviewing of the application submitted and ensuring its completeness, shall notify of the approval in the standard format or rejection with reasons thereof to the foreign investor within 7 days of the application.

3. Period of injecting the foreign investment (Rule 9)

The foreign investor, on obtaining approval of the foreign investment in an industry from the approving authority, shall inject the investment committed within one year in the following tranches:

Investment Committed	% of investment
Minimum investment of NRs 50 million	25% of total amount
Above NRs 50 million to NRs 250 million	15% of the total amount
Above NRs 250 million to NRs 1 billion	10% of the total amount
Above NRs 1 billion	5% of the total amount

Notwithstanding anything stated above, the foreign investor has to bring 70% of the approved foreign investment prior to the commencement of the commercial operation or commencement of the transactions and the remaining 30% within 2 years thereof. However, where investment is made by acquisition of the shares in an industry, the investment has to be brought in within one year of the approval of the foreign investment.

Foreign investors who have not injected the investment committed in industries that are in operation at the time of enactment of the regulations have been granted 6 months i.e. up to 10 July 2021 to remit the remaining amount in such industry.

4. Foreign investment through establishment of branch office (Rule 6)

Foreign investors willing to set up a branch office in Nepal can from now on open branch offices in Nepal after obtaining the required approval from the Department of Industry and registering an industry in Nepal. Branch offices can be opened only in such industries which are not in the negative list after obtaining approval by committing to invest the minimum investment of NRs 50 million.

5. Foreign investment in industry registered in province (Rule 24)

If an industry registered under the provincial laws seeks to obtain foreign investment approval, it has to apply to the approving authority with the documents outlined in Rule 8 along with the industry registration certificate and recommendation from the concerned provincial ministry for foreign direct investment.

6. Reinvestment from profits earned by a foreign investor (Rule 22)

The profits earned by an industry established with foreign investment may be reinvested in its

own industry or in another permitted industry. The investment cannot be less than 10% of the minimum investment i.e. NRs 50 million in case of and in excess of NRs 50 million in another industry.

7. Ceiling on royalty and other fees (Rule 5)

Ceiling for repatriation of royalty and other fees up to 5% of the total local sales and up to 10% of total exports sales has been prescribed. It has been clarified that royalty may also be computed as a percentage of the net profits up to 15% & 20% from local and export sales, respectively. In case a foreign investor has entered into multiple agreements for royalty and technical and management fees, the ceiling for total royalty and fees that can be repatriated shall not exceed the percentage prescribed on the sales amount. The ceiling of royalty and other fees is tabulated below:

a). Ceiling of Royalty amount or other fees for all types of Technology Transfer for Industry

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

b). Ceiling of Royalty amount or other fees for used by trademark

Local Sales	Exports 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

8. Escrow agreement to be recorded (Rule 7)

A copy of the escrow agreement shall be submitted by the foreign investor to the approving authority (DOI or IBN) and records of such agreements shall be maintained separately. The approving authority can add covenants at the time of granting approval for the operation and management of foreign

investment through leasing of aircraft, shipping line, machinery or other equipment.

9. Information of sale of shares or transfer of rights (Rule 10)

The foreign investor shall provide details of any sales of assets, transfer of rights or assets or change in ownership or beneficial ownership within 30 days of such transaction to the approving authority with the following details:

- agreement relating to the sales of assets, properties, shares
- The certified native of shares by the auditor and audit report
- Report of schedule of repatriation of sales proceeds of investment
- Tax Clearance Certificate
- Share record approved by Office of the Company Registrar (Share Certificate)

10. Repatriation of investments and returns (Rule 11)

A foreign investor can repatriate its investment or returns therefrom once it obtains approval from approval authority for which an application in standard format with the following documents have to be submitted:

- approval of repatriation from the Board of Directors and Annual General Meeting
- Shareholders register and director's register certified by Office of the Company Registrar
- Audit reports of previous year and tax clearance certificate
- Proof of investment made in the industry
- For sale of shares: approval of sale of shares and share purchase agreement
- For profits or dividend: Decision of the general meeting of the company regarding the distribution of profit or dividend, proof of distribution of staff bonus and audit reports for the year
- For lease: lease agreement I, payment of TDS and the lease rentals payable
- Documents related to the amount of

compensation or indemnity to be paid as a final decision according to the case, arbitration or any other legal process in Nepal.

- For Royalty: Document related to the amount of royalty paid
- Evidence of recording of disposal property, shares or the transfer of rights
- Other documents requested by the approval authority

11. Facilities

The following facilities have been arranged for the foreign investors:

11.1 IDENTITY CARDS (RULE 12)

The foreign investor shall be classified on the basis of the amount invested as follows and identity cards issued to its authorized representatives.

About Investment	Classification
NRs 50 million to NRs 250 million	General foreign investor
Above NRs 250 million to NRs 1 billion	Special foreign investor
Above NRs 1 billion	Most special foreign investor

11.2 VISA FACILITY (RULE 13)

Business Visa shall be granted to the foreign investor, its representative and family members based on the amount of investment made as follows:

Investments	Amount invested	Person
NRs 50 million	-	1 person
NRS 100 million or above	25% of the amount	1 person and family member
USD 1 million or more	lumpsum payment	2 person and family members residential visa till 50% of the investment in

Recommendation for Visa shall be issued through the Single Point Service Centre to the related office within 2 days of the application if the following is found in order.

- approval letter of Foreign Direct Investment
- Copy of the passport of the applicant

- Proof of the appointment of authorized representative
- Proof of the relationship from the competent authority of the country of domicile or Nepalese embassy
- Work permit and labor permit in case of non-tourist visa.

11.3 OPENING OF SALES COUNTER (RULE 15)

Industries shall be permitted to open sales counter within its premises to sell its manufactured products.

12. Recommendation, coordination and facilitation for acquisition of land (Rule 14)

The approving authority or industry registering authority, on receipt of an application with the required documents from a foreign investor whose investment has been approved for energy, production, infrastructure and mineral based industry, shall coordinate and facilitate in acquiring land identified by the foreign investor who cannot acquire such land from its own effort or make

recommendation to acquire land in excess of the land ceiling permitted as per the prevailing laws in coordination concerned agencies of the Nepal Government.

13. Cancellation of the approved foreign investment (Rule 17)

The approved foreign investment may be cancelled by the approving authority if the foreign investor or the industry has not complied with the covenants specified in the approval of foreign investment in Nepal and the provisions of the applicable laws relating to operation of the industry. The cancellation shall be initiated after inquiring is made which may include visit to the industry and providing sufficient opportunity to the investor for submission of sufficient justification why it should not be prosecuted and the approval cancelled.

14. Contract manufacturing (Rule 21)

A foreign investor can produce auxiliary goods through contract manufacturing as stated in section 45 from an industry registered in the DOI only.



right people
right size
right solutions

WHO SHOULD YOU CONTACT?

TR Upadhyay

Senior Partner

+977-01-4410927

tirtha.upadhyay@pkf.com.np

Shashi Satyal

Managing Partner

+977-01-4410927

shashi.satyal@pkf.com.np

Sanjeev Kumar Mishra

Partner

+977-01-4410927

sanjeev.mishra@pkf.com.np

Sumitra Rijal

Partner

+977-01-4410927

sumitra.rijal@pkf.com.np

Santosh Lamichhane

Director

+977-01-4410927

santosh.lamichhane@pkf.com.np

www.trunco.com.np

trunco@ntc.net.np

PKF TR Upadhyay & Co.

**124 Lal Colony Marg, Lal Durbar,
Kathmandu, Nepal**

www.pkf.trunco.com.np

DISCLAIMER

PKF T R Upadhyay & Co. is a member firm of the PKF International Limited family of legally independent firms and does not accept any responsibility or liability for the actions or inactions of any individual member or correspondent firm or firms.