

Foreign Investment &
Technology Transfer Act,
2075
(FITTA)
HIGHLIGHTS

INVESTING IN NEPAL:

WHAT A FOREIGN INVESTOR
NEEDS TO KNOW?





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Foreign Investment & Technology Transfer Act, 2075 (FITTA)

Background

The Foreign Investment and Technology Transfer Act 2019 (2075) ("FITTA") was promulgated on 27 March 2019 after it received the presidential assent. It has replaced the Foreign Investment and Technology Transfer Act 1992 and is expected to provide impetus to Nepal's quest to attract foreign investment into the country through streamlined and simplified procedures and clarity in the law.

Major taking points from the FITTA 2075

One of key highlights of FITTA 2075 is the inclusion of other forms of investments such as lease financing and investment in secondary market through Venture Capital Fund (VCF) under foreign investment. With this move Government of Nepal expects to attract more foreign investors to the secondary market. Secondary market in Nepal has recently been sluggish and this move is highly appreciated by the stakeholders. However, the procedures for setting up VCF is yet to be introduced by SEBON.

Another attracting feature of FITTA 2075 is the introduction of Single Point Service Center. Through this facility the investors can get various service from one place such as approval of foreign investment, registration, visa related services, work permits etc. This will definitely ease the tedious task of reaching out to multiple departments for clearance and approval.

One of the setback of FITTA 2075 is that foreign loans can only be obtained from financial institutions and not from the parent or a private enterprise. This would mean that a company won't be able to obtain loan from its cash rich parent. Another requirement the FITTA 2075 has imposed on the foreign investor is to notify any change in ownership including its holding, through sale of share or assets in or outside Nepal including change in the beneficial ownership within 30 days to the DOI/IBN. This provision is difficult to comply by those companies which have multiple layers of companies above them.

1.

How can a foreign investor invest in Nepal for recognition as foreign investment?

Foreign investment has been defined to include the following investments made by a foreign investor in Nepal:

- Investment in shares of a company in foreign currency.
- Reinvestment of earnings from foreign investment.
- Lease financing in airlines, ships, plant, machinery, construction equipment and other similar equipment up to the prescribed threshold. (Section 6)
- Investment in venture capital fund (VCF) by institutional foreign investor with the approval of Securities Exchange Board of Nepal (SEBON). The procedures for operation of the VCF shall be as prescribed. (Section 9)
- Investment in listed securities through the secondary market by VCF as established in Section 9. (Section 10)
- Investment through acquisition of shares or assets of a company registered in Nepal.
- Amount received by public or listed companies (Section 11) through banking channel by issuing securities in foreign capital market.
- Investment made through technology transfer in an industry established in Nepal. (Section 7)
- Investment through establishment and expansion of industry in Nepal.

TRU Comments:

The FITTA has excluded foreign loans from the definition of Foreign Investment and kept it as a separate instrument under section 12. Additionally, section 12 specifies that foreign loans can only be obtained from financial institutions and not from the parent or a private enterprise. Section 11 covers only loans obtained by public and listed entities by issuing Debenture Certificate, Bond certificate etc.

2.

Who are foreign investors?

Foreign investor includes any foreign individual, firm, company, Non Resident Nepali (NRN), foreign government or international agencies or similar organized institutions and includes foreign institutional investors. It also includes ultimate beneficial owner of the foreign company investing in Nepal.

A foreign investor can invest in any permitted industry individually or jointly, or thorough joint investment with Nepalese citizen or company established in Nepal. (Section 4)

TRU Comments:

The revised definition of foreign investor covers NRN, the ultimate beneficial owner/ ultimate holding company of a foreign investing company.

3.

What are the areas where foreign investment is permitted?

Foreign Investment is permitted only in such sectors classified as industries by the Industrial Enterprises Act 2016 except the following industries included in the negative list.

- Primary agriculture sectors such as fish farming, animal husbandry, horticulture, milk business and others.
- Small and cottage enterprise.
- Personal Service Business such as Hair saloon, Tailoring, Driving etc.
- Arm and ammunition industry, industry producing biological and chemical weapons, industries related to explosives, gunpowder, radio-active materials, atomic energy.
- Real estate businesses (excluding construction

industries), Retail business, Internal courier services, local catering services, money changer, remittance service.

- Travel agency, trekking agency expedition service provider, home stay and rural tourism.
- Mass-media business such as newspapers, radio, TV and online news.
- Movies of national language.
- Business and organizations providing management, accountancy, engineering and legal consultancy services and language training, music training, computer training.
- Business having more than 51% foreign investment in consultancy services.

TRU Comments:

As per FITTA 1992, retail chains with operations in 2 countries were permitted to invest in Nepal. However, the same is not covered in the FITTA 2019. Some sectors such as Bee Keeping, Fishery and security printing which were in the negative list has been removed in the FITTA 2075 indicating that these sectors are open for foreign investment.

4.

Has an investment cap been fixed on foreign investment (section 13)?

Minimum or maximum threshold for foreign investment has not been prescribed in the law however, pursuant to section 13 of FITTA, limit may be imposed for the following investments:

- For investment made through Venture Capital Fund as per Section 10.
- Investment in the service industry shall not be lower than the commitment given by Nepal at the time of becoming a member of WTO.
- Investment in equity shares only upto 51% is allowed in consultancy services.

TRU Comments:

The current minimum threshold fixed internally by DOI for investment by a foreign investor is Rs 5,000,000 (approx. 46,000 USD). However, the Ministry is contemplating of increasing the minimum amount of foreign investment which may directly affect inflow of investments into Nepal.

5.

Can a foreign investor invest in an industry through purchase of shares or property (Section 5)?

Any eligible foreign investor can invest in any permitted industry established in Nepal by acquiring the assets of the industry or shares not exceeding prescribed percentage.

6.

Can an investment be made through lease (Section 6)?

FITTA has introduced lease financing as one of the modes for foreign investment in Nepal. A foreign investor can invest through lease in airlines, ship, machinery, construction equipment or similar types of equipment within prescribed limit. (Lease financing).

7.

Are there any restrictions in transfer of technology and know-how (Section 7)?

A foreign investor can make foreign investment in any industry established in Nepal through transfer of technology and know-how by entering into agreement with the Nepali industry. Royalty in excess of the amount as specified in the agreement approved by the DOI/IBN cannot be repatriated.

8.

Can a branch be established in Nepal by a foreign investor (Section 8)?

The FITTA has permitted the establishment of a branch office of a foreign company after obtaining approval from the DOI.

TRU Comments:

Until now branch offices of foreign companies were established after incorporating in the Office of Company Registrar. As new procedures for establishment of branch offices have not yet been prescribed, there is a dilemma as to how branch offices shall be established from now onwards.

9.

Can investments be made through establishment of equity fund (Section 9)?

Yes, the foreign investor can invest in equity shares in Nepal after obtaining approval from Securities Board Nepal (SEBON) by establishing venture capital fund. There was an Investment Fund Regulation published by SEBON recently but it does not cover the foreign investment.

10.

Can foreign investors deal in securities transactions (Section 10)?

Entities establishing venture capital fund can transact in securities through the secondary market in the stock exchange after registering with SEBON. The minimum shares to be purchased, investment limit, minimum share holding period and reserve fund in foreign currency will become effective after GON notification.

11.

Who can issue bonds, debentures or securities in foreign currency (Section 11)?

Only public and listed companies established in Nepal or company obtaining approval for issuing debentures as per relevant act can issue bonds, debentures or securities to obtain loan or foreign currency. Such loan or currency obtained shall be invested in Nepal. This provision shall become effective after GON notification.

12.

Can foreign investment companies avail loans in foreign currency (Section 12)?

Any company with foreign investment can avail loans from a foreign institution under 'Project Loans' or 'Project Financing' arrangement on the recommendation of the Ministry of Industry, Commerce and Supplies and approval of the Nepal Rastra Bank.

TRU Comments: FITTA has not included loan as foreign investment and kept it separate, accordingly to avail loans approval from DOI is no longer required.

13.

Who are the approving authorities for foreign investments (Section 17)?

The following are the approving authorities for foreign investments:

- Department of Industries (DOI) for investments up to NRs 6 billion.
- Investment Board, Nepal (IBN) for investments above NRs 6 billion.

Where an industry registered as per the prevailing

laws of the province seeks foreign investment, approval of DOI is required. The industry registration certificate in the province and recommendation of the provincial government shall be submitted to DOI with other documents (Section 48) through self-declaration.

'Automatic Approval' and 'Single Point Service Center' are new provisions added in the FITTA. These provisions do not become effective until further gazette notification from the GON.

14.

What is the process of setting up an entity with foreign investment (Section 15)?

The process of obtaining approval for foreign investment is as follows:

- File an application in the prescribed form together with the relevant documents for foreign investment approval to the approving authority stated in 14 above. Also, required are the timeline for the investment to be remitted in the entity where investment will be made.
- Obtain approval letter from the approving letter within 7 days from the date of application, if application is complete in all respects.
- Approval of reinvestment in the same company or other industries not included in the negative list from profits earned is not required by an industry which has already been granted approval.
- Once approval of foreign investment is obtained, the investor has to incorporate a company under the Companies Act 2006 submitting the relevant documents.
- Register the entity with the Inland Revenue Department and obtain Permanent Account Number (PAN).
- Register the industry with the DOI and obtain Industry registration certificate.
- Register the business with the local authority.
- After obtaining approval for foreign investment the foreign investor shall notify NRB that the investment is brought from its legal source

for injecting the foreign investment into Nepal through banking channel in convertible currency except for Indian investors which can be brought in Indian currency. (section 16)

TRU Comments:

As per section 16(1) of the FITTA, to remit the proceeds of foreign investments into Nepal, a notification of approval from the approving authority to NRB will suffice however, subsection (2) gives power to NRB to specify the procedures for the same. Existing procedures to inject capital into Nepal in NRB is detailed, time consuming and cumbersome and it is expected that these procedures will be streamlined in the future.

- Other applicable approvals may be for environmental clearances where applicable and licenses for specific industries prior to commencement of business.
- Once approval is taken re-approval is not required for reinvestment in same industry or other industry except mentioned otherwise.

15.

What are the responsibilities of the foreign investor?

- Notify the DOI and NRB of any change in ownership of the company.
- Remit the investment amount within the period specified in the approval of foreign investment (Section 18(2)).
- Notify any change in ownership through sale of share or assets in or outside Nepal including change in the beneficial ownership within 30 days to the DOI/IBN
- Where by virtue of the sale of assets or shares of holding company there is a change in ownership of the Nepal entity, the Nepal entity is responsible to notify of such transactions to the approving authority.
- Pay taxes as applicable on change in ownership. (section 19)
- Not to act in contravention of FITTA and prevailing laws and conditions of approval.



16.

How will the capital and dividend be repatriated (Section 20)?

The foreign investor can repatriate the capital from sale of its shares or business and dividend earned from its operations in Nepal net of taxes through normal banking channel in the currency or in another convertible currency in which investments were made after obtaining exchange facilities from NRB and approval from the DOI/IBN within 15 days from the date of the application.

In addition, the following amounts can be repatriated by the foreign investor:

- In case of liquidation or cancellation of company amount remaining after fulfilling all obligations.
- Royalty amount received from technology transfer. However, industry producing liquor and liquor product shall not be permitted to repatriate royalty exceeding 5% of the sales net of taxes except for industry exporting 100% of liquor or liquor products.
- Lease rentals.
- Amount received as compensation after settlement of legal disputes or arbitration.
- Amount permitted by their prevailing laws.

TRU Comments:

Where approval for foreign investment is granted in 7 days, the repatriation of capital, dividend and other proceeds are given in 15 days plus the time taken by the NRB. It appears that the GON has not considered facilitating repatriation of capital and profit in a smooth and efficient manner

17.

What service can be availed from Single Point Service Centre (Section 23)?

The Single Point Service Centre is proposed in the FITTA 2075, as in its predecessor which was never formed, to provide the following concessions, facilities, incentives and services to foreign investors. Industry registration and administrative related work:

- Approval of foreign investment and loan.
- Company registration and administration related work.
- Work permits.
- Visa related facilities.
- Quality measurement and control of goods produced by industry.
- Approval of EIA & IEE reports.
- Focal point for energy and infrastructure development and necessary facilitation.
- Other concession and facility provided to industry.
- PAN registration.
- Foreign exchange approval as per GON.
- Others as specified.

TRU Comments:

This service center is proposed to be housed in the premises of DOI. It is understood that the operating directive of single point service center has been approved by the cabinet and in the process of implementation once the centre is set up.

18.

When does the approved investment be cancelled (Section 43)?

Foreign investment approval shall be effective until foreign investment is retained in Nepal or where the investor does not make investment within the prescribed time period without reasonable justification; and/or breaches the rules and regulations, or any conditions imposed during approval after fulfilling procedures set out in the regulations.

The approval of foreign investment is deemed to be cancelled if:

- The approved investment could not be remitted without reasonable justification within 2 years from the approval date.
- The shares are sold or transferred to a Nepali investor.
- The company is liquidated or the industry license is revoked.

19.

Can contract manufacturing be undertaken by foreign investors (Section 44)?

Contract manufacturing has been added in FITTA but it has limited such production for a component or part of the main product. The interpretation of the provision indicates that the company with foreign investment cannot manufacture its main product through contract manufacturing.

TRU Comments:

The Industrial Enterprises Act 2016 had permitted contract manufacturing and several large companies with foreign investment had been producing its main product through contract manufacturing. Only permitting contract manufacturing for a component or part of the main product does not make business sense and appears that this clause has been incorporated in the law to benefit the importers of finished products, i.e., Nepali traders.

20.

What are the dates that the foreign investor should be aware of?

- Approval for foreign investment shall be given within 7 days of submission of the complete application
- Permission to repatriate income shall be given within 15 days of making such application.
- If foreign investor is dissatisfied with decision made by approval granting entity application can be filled in ministry. Ministry shall make decision on such matter within 30 days of making application.

21.

What are the concessions, facilities and incentive available to companies with foreign investment?

Facilities provided by the Industrial Enterprises Act 2016	<p>In addition to the concessions, facilities and incentive or protection granted by FITTA, all other such facilities provided by Industrial Enterprises Act 2016 and other prevailing laws are granted but not facilities available to sick industries.</p>																
Foreign exchange transaction and facilities (Section 25 & 26)	<p>Foreigners and companies can open and operate bank account in any of the commercial bank in Nepal and transact in Nepalese currency, foreign currency or both currencies with prior approval of NRB. Foreign investors can avail foreign exchange facilities in the open market for the following purposes:</p> <p>Payment to the experts, highly skilled technicians, managerial level employees</p> <p>Payment of principal or interest of bond or debenture</p> <p>To repatriate income invested and earned by entity</p>																
Hiring expatriates	<p>Hiring of expatriates as experts, in key managerial position, technical experts, managerial and technical staff can be made by entities only when qualified Nepali nationals are not available for such positions. The entities have been provided the onus of training and development of Nepali staff to replace the expatriates. Furthermore, the labor law has restricted the number of expatriates that can be hired by an entity to a maximum of 5% of the total workforce.</p> <div data-bbox="435 1149 1493 1328" style="background-color: #008080; color: white; padding: 5px;"> <p>TRU Comments: Restricting hiring of expatriates in key managerial and technical position is an impediment to foreign investment. In this globalized world with moving workforce, Nepal should not restrict employing expatriates as this will impede in developing local managerial and technical capabilities in the long run.</p> </div>																
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Visas	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Visa Type</th> <th style="width: 55%;">Issued to</th> <th style="width: 30%;">Duration</th> </tr> </thead> <tbody> <tr> <td>Non-Tourist Visa</td> <td>A foreign national visiting Nepal for conducting study, research or survey for investment in Nepal.</td> <td>Up to 6 months</td> </tr> <tr> <td>Business Visa</td> <td>A foreign investor or dependent family member or authorized representative of such foreign investor or dependent family of such authorized representative. In case investment is made by a company in excess of the prescribed amount, visa facility shall be granted to maximum two persons and their immediate family member.</td> <td>Until the foreign investment is retained</td> </tr> <tr> <td>Residential Visa</td> <td>Foreign investor who, at a time, makes an investment in excess of US\$ 1 million (previously one hundred thousand dollar) or in equivalent convertible foreign currency.</td> <td>Residential visa granted to the investor and dependent family until such investment is retained</td> </tr> <tr> <td>Non-Tourist Visa</td> <td>Foreign specialist, technician or managerial staff working in industry</td> <td>As per necessity</td> </tr> </tbody> </table>		Visa Type	Issued to	Duration	Non-Tourist Visa	A foreign national visiting Nepal for conducting study, research or survey for investment in Nepal.	Up to 6 months	Business Visa	A foreign investor or dependent family member or authorized representative of such foreign investor or dependent family of such authorized representative. In case investment is made by a company in excess of the prescribed amount, visa facility shall be granted to maximum two persons and their immediate family member.	Until the foreign investment is retained	Residential Visa	Foreign investor who, at a time, makes an investment in excess of US\$ 1 million (previously one hundred thousand dollar) or in equivalent convertible foreign currency.	Residential visa granted to the investor and dependent family until such investment is retained	Non-Tourist Visa	Foreign specialist, technician or managerial staff working in industry	As per necessity
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Land	<p>An entity where foreign investment has been approved can acquire land for setting up an industry or can lease land for the purpose. Where land cannot be identified by the investor, or where the land required is in excess of the prescribed ceiling, the approval authority shall provide necessary arrangement, approval and facilitation to identify the required land.</p>
National treatment	<p>All foreign investors shall be provided national treatment for management, use, maintenance of such investment in Nepal except for following:</p> <ul style="list-style-type: none"> • Creation of Intellectual Property, their limit and compulsory licensing of right to use as agreed with the World Trade Organization (WTO). • Concessions and facilities provided to local industry or goods as per the prevailing laws on public procurement. • Grant or concessions provided by the Government of Nepal. • Non-commercial services provided by Government of Nepal. • Necessary measures adhered to or framed by Government of Nepal on financial services on matters such as protections of interests of investors, participants of securities market, insurance policy holder or person claiming insurance or soundness, integrity and financial responsibility of financial institutions who are in fiduciary capacity. • Where Nepal is a party to or is a potential party to a regional or multilateral financial, monetary agreement or is associated to similar organization and because of such arrangement it is obliged to or is required by provision to give special treatment. • Conditions imposed by regulators in repatriating investment, repayment of loans (principal, interest or fee), service fee etc. <p>On matters such as public health, fauna, flora or environment protection.</p>



right people
right size
right solutions

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