PKF International Limited

Doing Business in Nepal

LOCAL
KNOWLEDGE,
GLOBAL
EXPERTISE

Important Disclaimer

This publication should not be regarded as offering a complete explanation of the matters that are contained within it and all information within this document should be regarded as general in nature. While significant care was observed in creating this publication, the possibility exists that certain information may, in time, become outdated. This publication has been sold or distributed on the express terms and understanding that the publishers and the authors are not responsible for the results of any actions which are undertaken (or not undertaken) on the basis of the information which is contained within this publication, nor for any error in, or omission from, this publication.

The publishers and the authors expressly disclaim all and any liability and responsibility to any person, entity or corporation who acts or fails to act as a consequence of any reliance upon the whole or any part of the contents of this publication. Accordingly, no person, entity or corporation should act or rely upon any matter or information as contained or implied within this publication without first obtaining advice from an appropriately qualified professional person or firm of advisors, and ensuring that such advice specifically relates to their particular circumstances.

PKF Carpentieri Colmenares & Asociados 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.

© PKF International Limited
All Rights Reserved. Use Approved with Attribution.

“PKF” and the PKF logo are registered trademarks used by PKF International and member firms of the PKF International Network. They may not be used by anyone other than a duly licenced member firm of the Network.

Contents

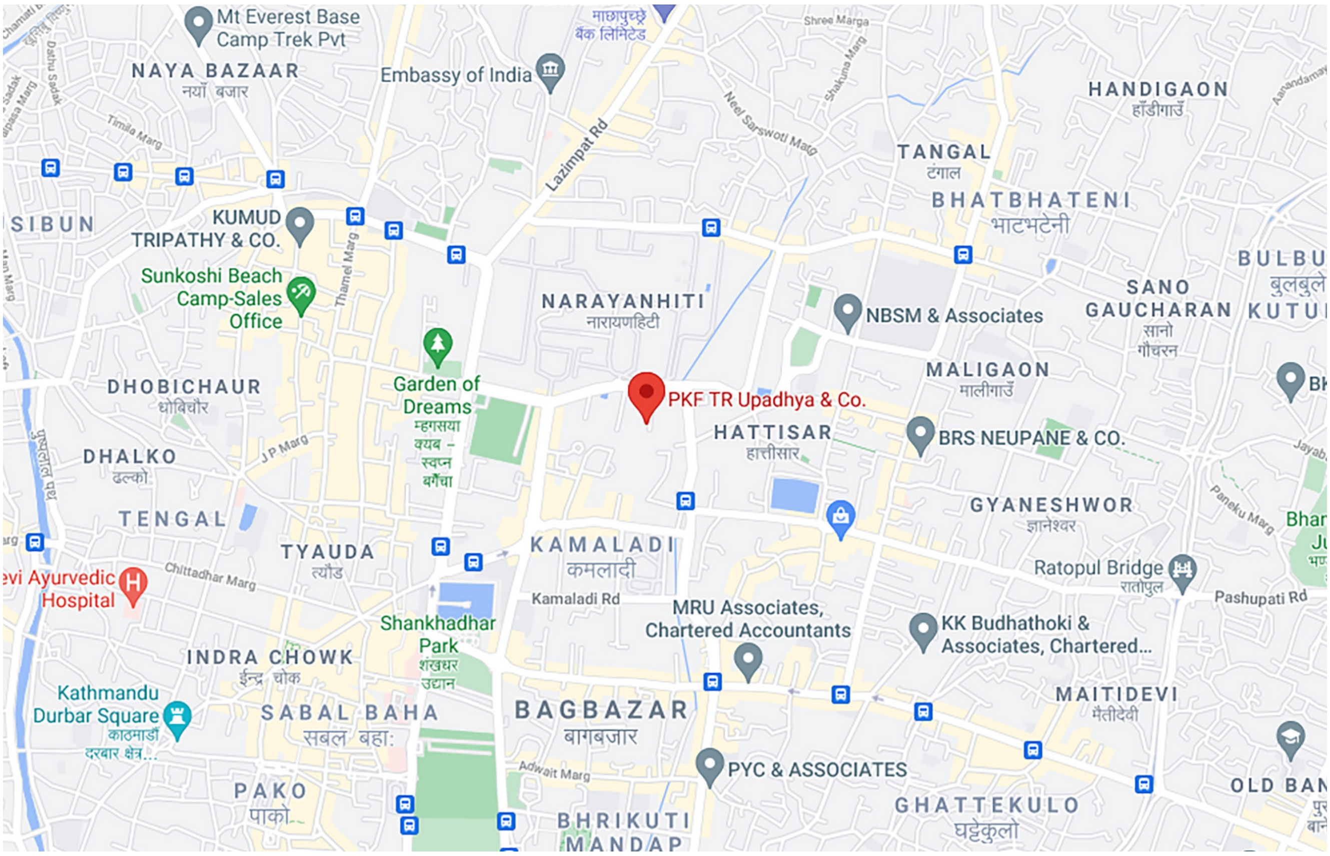
Contact Us in Nepal

PKF T R Upadhya & Co.

Kathmandu Office

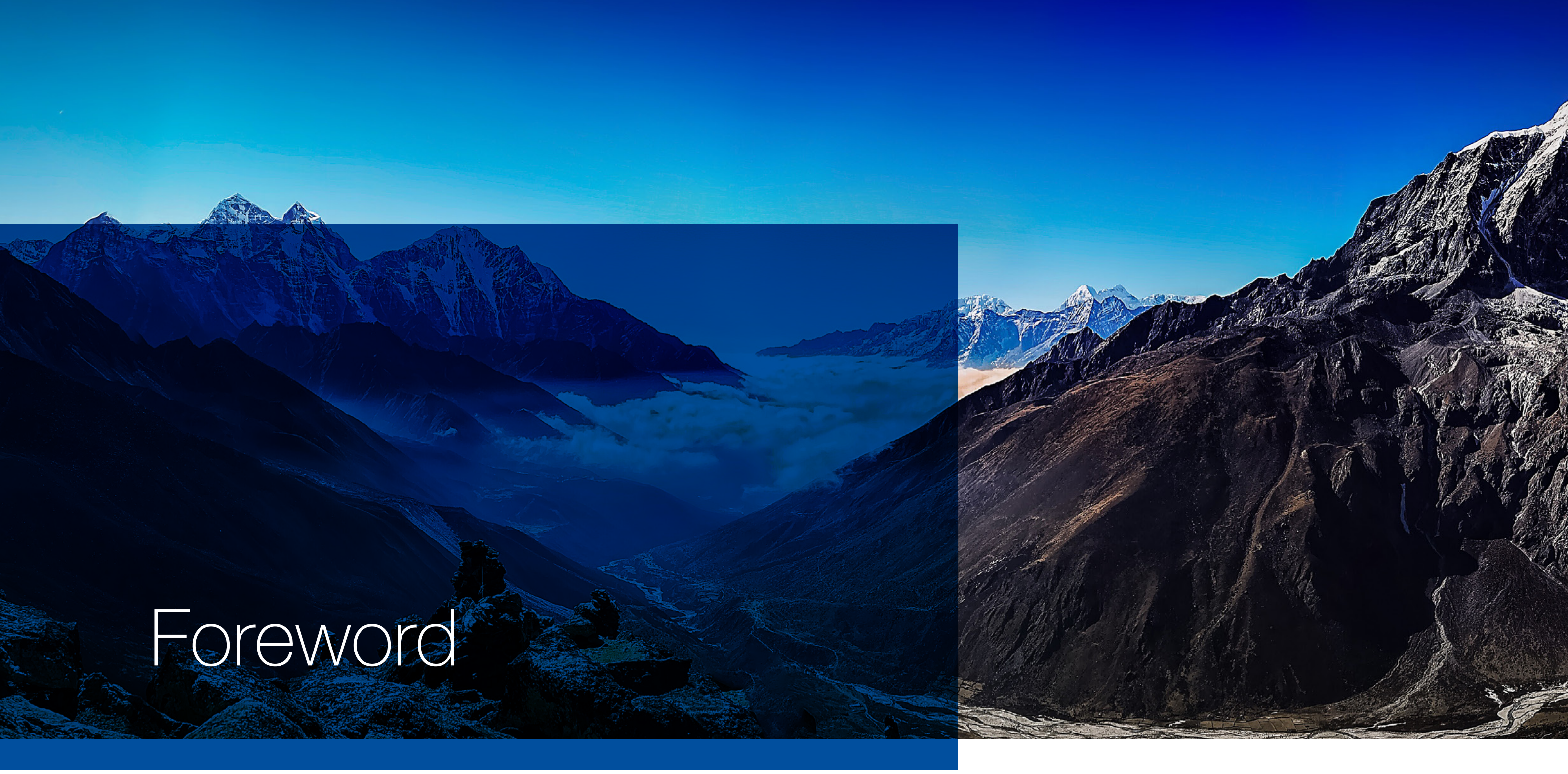
124 Lal Colony Marg, Lal Durbar, Kathmandu, Nepal

Phone: +977 1 4410927 | 4420026
Fax: +977 1 4413307 |
Email: trunco@ntc.net.np
Visit us at www.pkf.trunco.com.np



ACRONYMS

AOA	Articles of Association
ASBN	Accounting Standards Board, Nepal
AuSB	Auditing Standards Board, Nepal
BFI	Banks and Financial Institutions
CIF	Cost, Insurance and Freight
COP	Certificate of Practice
CSR	Corporate Social Responsibility
DOED	Department of Electricity Development
DOI	Department of Industries
DTAA	Double Taxation Avoidance Agreements
EIA	Environmental Impact Assessment
EOI	Expression of Interest
FDI	Foreign Direct Investment
FERA	Foreign Exchange (Regulation) Act, 1962
FITTA	Foreign Investment and Technology Transfer Act, 1992
FY	Financial Year
GDP	Gross Domestic Product
GoN	Government of Nepal
IBN	Investment Board, Nepal
ICAN	Institute of Chartered Accountants of Nepal
IEA	Industrial Enterprise Act
IEE	Initial Environment Examination
IFRS	International Financial Reporting Standard s
INGO	International Non-Governmental Organization
IPR	Intellectual Property Rights
IPSA	International Public Sector Accounting Standards
IRD	Inland Revenue Department
IRO	Inland Revenue Office
ISD	Inheritance and Gift Tax Act
ITA	Income Tax Act, 2058
MoA	Memorandum of Association
MW	Megawatts
NAS	Nepal Accounting Standard
NFRS	Nepal Financial Reporting Standard
NGO	Non-Governmental Organization
NPR	Nepali Rupees
NRB	Nepal Rastra Bank
NRN	Non Resident Nepali
NSA	Nepal Standards on Auditing
OCR	Office of the Company Registrar
PAN	Permanent Account Number
POA	Power of Attorney
PPP	Public Private Partnership
SEBON	Securities Board of Nepal
SEZ	Special Economic Zone
SSF	Social Security Fund
SWC	Social Welfare Council
TDS	Tax Deducted at Source
TRU	T R Upadhya & Co., Chartered Accountants
VAT	Value Added Tax
VCF	Venture Capital Fund

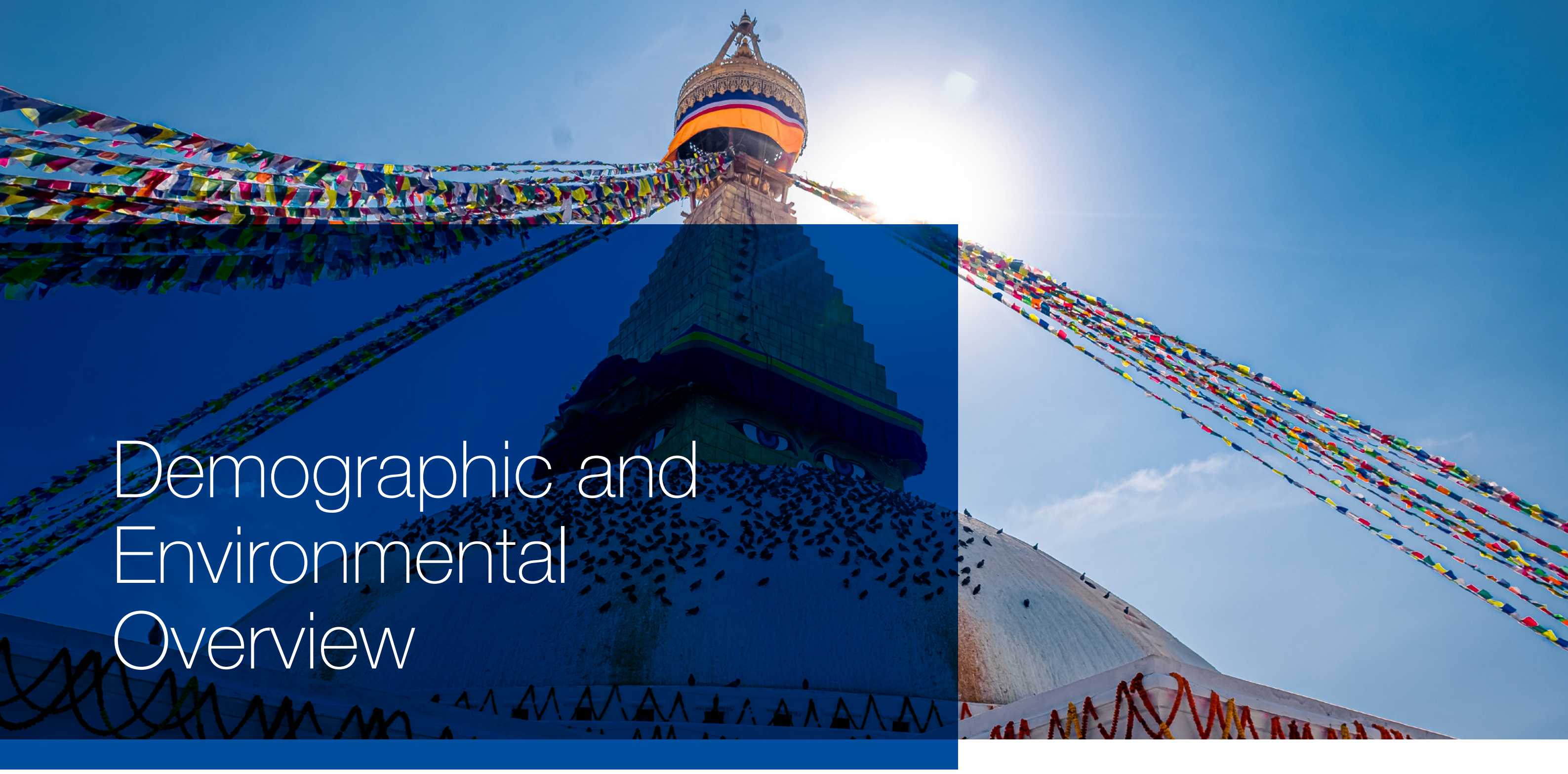


Foreword

This booklet is produced as a service to the clients of the PKF International member firm in Nepal, and as an introduction to the legal and commercial environment of Nepal for those who are considering doing business within its jurisdiction. The contents provide a guide for understanding the business processes, not a complete description of everything a business or entity needs to know. This booklet should not be used as the basis for laws of Nepal which are constantly being modified – both legislatively and judicially. Clients are advised to seek specific professional advice from a PKF member firm in Nepal before proceeding with any business activities in Nepal.

PKF T R Upadhya & Co. provides various other materials regarding the recent updates in the country in relation to the prevailing laws and regulations, including taxation laws on a periodic basis, which can be found in the official website of the firm in the form of flash alerts, monthly newsletters and other publications/highlights.

We, at PKF Nepal, hope this booklet will help in providing readers with an insight on setting up business in Nepal.



Demographic and Environmental Overview

A profile of Nepal

Nepal is one of the world's most exciting, captivating and unforgettable places. From the lush green jungles of the Indian plains to the snow-capped peaks of the towering Himalayas, Nepal fuses rich cultural diversity with natural beauty.

Nepal features eight of the world's ten highest mountains, including Mount Everest (Sagarmatha); it has the largest Shiva temple in the world; it is the birthplace of Siddhartha Gautama (Buddha); and it is home to elusive snow leopards, rare one-horned rhino and beautiful tigers.

A stable political environment, investment promotion and strong economic development is continuing Nepal along the path of prosperity.

Geography and population

Nepal, officially the Federal Democratic Republic of Nepal, is a sovereign country in South Asia and is landlocked. It borders China in the north and India in the south, east and west. It has an area of 147,181 sq. km and its rectangular proportions measure on average 885 km in length and 193 km in breadth. Nepal is mainly in the Himalayas, but also includes parts of the Indo-Gangetic Plain. Nepal is divided into three principal physiographic belts known as Himal-Pahad-Terai.

Nepal is a multicultural and multi-ethnic country, home to 125 distinct ethnic groups speaking 123 different mother tongues and following a number of indigenous and folk religions in addition to Hinduism, Buddhism, Islam and Christianity. Descendent of Sanskrit, Nepali is written in Devanagari script and serves as the official language among various ethno-linguistic groups. Nepal is a secular country, as declared by the Constitution of Nepal.

Nepal has an estimated current population of 29.34 million (based on Worldometer elaboration of the latest United Nations data). Nepal is one of the ten least urbanized, and the ten fastest urbanizing countries in the world. The capital, Kathmandu – nicknamed the "City of Temples" – is the largest city in the country and the cultural and economic heart.

Legal system

Nepal is a federal, democratic republic and secular state, where the largest majority of Hindu population resides. As an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented federal democratic republican state (art. 4(1), the Constitution of Nepal), the country has been a Federal Democratic Republic since May 2008. Historically, the Nepalese legal system is based on Hindu philosophy and its growth and development is largely influenced by Hindu religious texts.

The Federal Parliament of Nepal is the bicameral federal and supreme legislature of Nepal established in 2018. It consists of the National Assembly as the upper house and the House of Representatives as the lower house.

The president is the head of state of Nepal and the prime minister is the chief executive of the Government of Nepal (GoN) who is elected by the Legislature-Parliament. The executive branch of government includes the president, the prime minister, the Council of Ministers or Cabinet, constitutional and statutory bodies, and the bureaucracy, comprising various personnel services, formed to carry out executive functions.

The administrative divisions of Nepal are sub-national administrative units of Nepal. The first level of country sub-division of Nepal are the provinces. Each province is further sub-divided into districts; each district into municipalities and rural municipalities; and each of those municipalities into wards. Nepal is composed of seven provinces. Provinces are further divided into 77 districts. Urban municipalities are categorized into three levels: Metropolitan city (Mahanagarpalika), Sub-metropolitan city (Upmahanagarpalika) and Municipality (Nagarpalika). There are six metropolitan cities, 11 sub-metropolitan cities and 276 municipalities in Nepal. Rural municipalities are known as Gaunpalikas.

Under the judicial system, Nepal has three types of court: District Court, Appellate Court and the Supreme Court. The Supreme Court is the highest judicial body.

Environmental overview

The country is one of the prime biodiversity hotspots in the world. With highly fragile and young mountain geology, Nepal exhibits a broad range of topography - from sea level to the tallest peak in the world., It hosts precipitation from arid rain shadow areas through to highly flood-prone plains, and environment from glacial to tropical ecosystems.

Nepal's unique geological setting, rich natural resources, abundant water, fertile lands and cultural diversity form a sound basis for the socio-economic development of the country. However, sustainable use and management of these resources has been the main challenge. Soil erosion and degradation, declining soil fertility, Nepal's monsoon-dependent agriculture, the unsustainable use of fertilizers and pesticides, as well as increasing temperatures, variation in precipitation and frequency and intensity of droughts and floods has reduced agricultural production. Despite these constraints, Nepal has the potential to deliver higher and more inclusive growth by properly utilizing the large amount of water available for generating hydropower and irrigation, processing its abundant medicinal herbs and promoting tourism. Agriculture has high potential if productivity is increased and transformed into commercial high-value products.

As an approach to environmental conservation, the parliament enacted the Environment Protection Act, 2076 (2019) on 19 July 2019, which specifically addresses the issues of climate change, obligates the GoN to recognize the sectors that produce greenhouse gas and mitigate its effects on the environment. Further, Nepal is a signatory to 21 environment-related international conventions. It has endorsed and ratified these conventions and responded to major obligations by formulating appropriate policies, strategies and action plans.

Economic summary

Nepal is a developing economy. The economy of Nepal is heavily dependent on remittances, which amount to as much as 30% of gross domestic product (GDP). Agriculture is the mainstay of the economy, providing a livelihood for almost two-thirds of the population but accounting for less than a third of GDP. Industrial activity mainly involves the processing of agricultural products, including pulses, jute, sugarcane, tobacco, oilseed and grain. Major industries include tourism, carpets, textiles, cigarettes, cement and brick.

The GDP in Nepal which experienced contraction in 2020 and settled around USD 27.50 billion is expected to grow by 3.1 % and reach USD 29.30 billion by the end of 2021, according to Trading Economics' global macro models and analysts' expectations. Nepal has been a member of WTO since 23 April 2004. The 16.8 million worker Nepali labour force is the 37th largest in the world. According to the World Bank's report, Nepal ranks 94 out of 190 countries surveyed in the 'Ease of Doing Business' index (2020) by scoring 63.2 points.

Services and exchange controls

Nepal is involved in the import of merchandise and services (education, health, travel abroad, cost of diplomatic missions abroad). Accordingly, various loans and financial assistances are being sought on a regular basis by the GoN from different countries and organizations.

Supply of foreign exchange is practiced in various forms such as workers' remittances and pensions, exports of goods and services (including tourism), expenses in Nepal by foreign diplomatic missions, INGOs and charity organizations, foreign aid, interest on investment abroad, foreign direct investments and so on.

In order to regularize and control the foreign exchange transactions, Foreign Exchange (Regulation) Act, 1962 (2019) (the FERA) is in effect. FERA covers a wide range of scope, some of which are:

- use of foreign exchange investment and technology transfer;
- use of foreign exchange for the payment/receive of foreign trade;
- use of foreign currency in loan exchange (transaction) with foreign entities;
- regulations of foreign-related transactions.

Nepal today

The global COVID-19 (Coronavirus) pandemic imposed both a supply and demand shock on Nepal's economy, which adversely affected growth. As a result of the impact of COVID-19, GDP growth in Nepal is estimated at 1.8% in FY 2020, compared with 7% in FY 2019. Growth in the service sector is now estimated at 1%, the lowest since FY 2002, while growth in the industrial sector is estimated at 3.2%, a four-year low, due to the deceleration in overall growth.

Nepal's economic growth slowed to 0.2% in FY 2020, mainly due to a national lockdown in response to the pandemic. Service sector growth deteriorated to an 18-year low of 0.7%, as tourism arrivals stopped while domestic transport and wholesale and retail trade were disrupted. Industrial growth contracted and capacity utilization fell from 80% to 46% because of shortages in production inputs and labour. Agricultural growth also decelerated sharply as market access and labour mobility became constrained. In the manufacturing sector, tightening domestic credit conditions, an increased foreign direct investment threshold and continued low execution rates of public investment projects resulted in a contraction of investment and the number of new businesses registered. Services were impacted by the deceleration in remittances growth and lower tourist arrivals from India, leading to an overall drop in arrivals of 4.3% (year-on-year), and an associated slowdown in tourism receipts.

Now, the economy is slowly reviving as the previously shut down factories have restarted production, offices have resumed normally and the government is also able to collect revenue through tax collection. As virus restrictions are gradually eased, hotels and tourist sites are now racing to restart tourism focusing on local travellers by promoting internal tourism to the fullest. The country is moving forward with digitization by moving trade in goods and services, social interactions and the provision of public services online. Various payment facilities are made digital in order to avoid queues at banks, medical stores, schools, financial institutes and even the tax offices for various kinds of payments.

The GoN has responded to the crisis with fiscal and monetary measures, providing the option of deferred payment of taxes and concessional loan facilities to thelp revive business. The Central Bank of Nepal has included a relaxation of regulatory requirements for banks and financial institutions, and a reduction of targeted interest rates as part of the country's interest rate corridor as a key measure.

Significant projects such as Youth Employment Transformation Initiative and Finance for Growth have been launched by the country – with financial assistance from World Bank – to combat the hard-hit economy, strengthen financial sector stability, diversify financial solutions and increase access to financial services in support of Nepal's COVID-19 resilience and recovery efforts. The aim is also to help Nepal improve the efficiency and safety of transport infrastructure, improve efficiency of cross-border trade and strengthen capacity for strategic road network management.

https://www.worldbank.org/en/country/nepal/overview

https://www.worldbank.org/en/country/nepal/coronavirus

Consumer Protection and Special Industries

Intellectual and industrial property rights

As economies are becoming increasingly knowledge and technology oriented, intellectual capital and its protection have gained significant importance. Nepal too has recognized the value of intellectual property (IP) and there is a growing trend both on the part of the legislators and the judiciary to afford protection to IP and enforce intellectual property rights (IPR).

In Nepal, the protection and enforcement of IPR are primarily governed by the Copyright Act, 2059 (2002) and the Patent, Design and Trademark Act, 2022 (1965). In addition, Nepal is also a signatory to various IP treaties such as the Paris Convention for the Protection of Industrial Property, 1883, the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 and the Berne Convention for the Protection of Literary and Artistic Works, 1886 pursuant to which Nepal is under an obligation to safeguard IPR. Nepal is also a member country of the World Intellectual Property Organization.

Under the Patent, Design and Trademark Act, 2022 (1965), the right is protected under the registration of trademark with the concerned authority. The trademarks are registered in Nepal if such a trademark:

- would not damage the reputation of any individual or institution;
- is unlikely to adversely affect public conduct or morality or the national interest;
- would not adversely affect the reputation of the trademarks of another person;
- has not already been registered in the name of another person.

These are the restrictions to registrations. The trademark that passes these restrictions during the search and examination conducted by the registry after receiving the application may be registered. It would then be valid for up to seven years unless renewed.

If a person suffers any losses as a result of violation of the provisions of the law by any other person in respect to the patent, design or trademark, the Department of Industry may order to refund the amount actually suffered by the title holder from such offender in the form of compensation.

There is provision of use of trademark after registration. If the trademark is not brought into use within one year from the registration, the registry after making necessary investigations can cancel the registration.

The Copyright Act, 2003 (2059) of Nepal governs copyright, the right to control the use and distribution of artistic and creative works in Nepal and also encourages the creation of art and culture by rewarding authors and artists with a set of exclusive rights. The Copyright Registrar's Office handles copyright registration, recording of copyright transfers and other administrative aspects of copyright law.

The copyright protection can be extended to any works except any thought, religion, news, method of operation, concept, principle, court judgment, administrative decision, folksong, folktale, proverb and general data despite the fact that such matters are expressed, explained, interpreted or included in any work.

Consumer and user protection

The Consumer Protection Act, 2018, implemented in September 2018, is the relevant law in Nepal in order to protect the interest of consumers regarding the quality, quantity and price of consumer goods and services. The law has tried to address the shortcomings of the Consumer Protection Act, 1998. The primary objective of the law is to promote, protect and enforce the rights of consumers. It is empowered to conduct investigations into violations of consumer rights and institute complaints/prosecution.

The Consumer Protection Act (Chapter 2) explains about the rights of consumers regarding the quality of goods and services including the regulation of goods and services, quality of goods and services and affixation of label. Chapter 4 of the Consumer Protection Act, 2018 prohibits various activities in order to protect consumers. The law has tried to address the shortcomings of the previous law by elaborating and extending the prohibited activities.

Legal Framework for Business

Accounting regulations in Nepal

The accounts shall be maintained according to the double entry system of accounting and in consonance with the accounting standards enforced by the Accounting Standards Board, Nepal (ASBN) and with such other terms and provisions required to be observed pursuant to the Companies Act, 2006, in such a manner as to clearly reflect the actual affairs of the company. Every company should maintain its accounts in the Nepali or English language.

The directors or other officers shall have the final responsibility to maintain books of account and records of the company. Where there is a default in complying with the provisions made in the Companies Act in respect of the preparation of books of account and annual financial statements of a company, the director or officer him/herself, during whose tenure the annual financial statements and other reports have been prepared, shall be responsible.

For banks and financial institutions (BFIs), the Central Bank of Nepal (Nepal Rastra Bank) regulates and supervises the accounting and reporting requirements while the Insurance Board of Nepal is the regulatory body of the insurance companies. These bodies regulate and supervise the BFIs and insurance companies and circulates the templates/formats for the financial statements including directives and circulars from time to time. The annual financial statements of BFIs and insurance companies are subject to review and approval from these authorities before issuing to the general public.

Accounting standards – NFRSs and NASs

The business entities registered in Nepal shall prepare the financial statements in compliance with the Nepal Financial Reporting Standards (NFRSs) and Nepal Accounting Standards (NASs).

The ASBN is an independent statutory body responsible for setting the standards for the preparation and presentation of financial statements in Nepal. The Institute of Chartered Accountants of Nepal (ICAN) is responsible for pronouncing the applicability of those standards. The ASBN sets accounting standards for business enterprises in convergence with International Financial Reporting Standards (IFRSs) and for public sector entities in line with the International Public Sector Accounting Standards (IPSASs). The following standards have been pronounced by the ASBN to the business enterprises based on nature and volume of transaction:

- Nepal Financial Reporting Standards (NFRSs), 2018
- Nepal Financial Reporting Standards for Small and Medium-sized Entities (NFRSs for SMEs), 2017
- Nepal Accounting Standards for Micro Entities (NASs for MEs), 2018
- Nepal Accounting Standards for Not for Profit Organizations (NASs for NPOs), 2018

Accounts controls in Nepal: Statutory audits

Statutory audit provides the reasonable assurance to all the stakeholders that the financial statements give a true and fair view of company's financial position. The Companies Act of Nepal requires every company to appoint an auditor to have its accounts audited. In cases where any company has a branch office outside Nepal, the auditor appointed may also audit the accounts of that branch office except as otherwise provided in the prevailing law of the country where the branch office is situated.

Statutory audit in Nepal is governed by the Companies Act and Nepal Standards on Auditing (NSAs) set by the Auditing Standards Board, Nepal (AuSB) and pronounced by ICAN. ICAN issues the license (Certificate of Practice) to its member to carry out audits under the prevailing laws of Nepal. ICAN is also responsible to regulate its members.

Appointment of auditor

The auditor of a company shall be appointed, from among the auditors licensed to carry out audits under the prevailing law, by the general meeting, in the case of a public company and, in accordance with the provision as contained in the articles of association or consensus agreement, any failing such provision, by the general meeting, in the case of a private company; and his/her name shall be forwarded to the Office of the Company Registrar (OCR) within fifteen days from the date of such appointment. Provided, however, that the board of directors may appoint the auditor prior to the holding of the first annual general meeting.

Where the annual general meeting of a company fails to appoint an auditor for any reason, where the annual general meeting itself cannot be held or where the auditor appointed ceases to continue his/her office for any reason, the OCR may – at the request of the board of directors of the company – appoint another auditor.

Standards on auditing – Nepal Standards on Auditing (NSA)

ICAN, an independent statutory body, has been issuing Nepal Standards on Auditing (NSAs) formulated by the AuSB. The members of ICAN should follow the NSAs while conducting the audits and review engagements.

The AuSB reviews and revises the NSAs at periodical intervals or as per the need of the respective standards. The AuSB determines the broad areas in which the NSAs need to be formulated and the priority in regard to the selection thereof. The AuSB has formulated the Nepal Standards on Quality Control (NSQC 1), 49 NSAs as well as three guidance notes, one practice statement and the Nepal Framework for Assurance Engagements.

These standards are in line with International Standards on Auditing (ISAs).

Content of financial data to be published: Annual accounts

The following annual financial statements shall be prepared by the board of directors of a public company every year at least thirty days prior to the holding of its annual general meeting, and in the case of a private company, within six months of the expiry of its financial year.

a) Statement of financial position as at the last date of the financial year

b) Statement of profit and loss and other comprehensive income of the financial year

c) Statement of Cash Flow of the financial year

d) Statement of changes in equity

e) Notes, comprising significant accounting policies and other explanatory information

Such financial statements should also contain, in the case of the year of incorporation of the company, the accounts from the date of its incorporation to the last day of that financial year, and thereafter, the accounts of the previous financial year.

In addition, every public company and private company with paid-up capital of NPR 10 million or annual turnover of NPR 100 million or more should prepare a separate report of board of directors. These financial statements should be kept open for inspection by any shareholder, if he/she so desires, and should be retained at least for a period of five years from the expiry of the financial year concerned.

Legal audit limits

Every business entity registered in Nepal must have its annual accounts audited by an independent professional accountant having a Certificate of Practice (COP) issued by ICAN for each fiscal year. The audited financial statements should be submitted to the respective regulatory authorities within six months (within three months to the Income Tax Authorities, which can be extended for a maximum of another three months) from the end of the financial year.

No auditor or his/her partner, ex-partner, employee or ex-employee shall be appointed as auditor for more than three consecutive terms to perform the audit of a public limited company. This restriction shall not apply to any partner who ends the partnership or any employee who leaves the service of such auditor three years before.

A licensed auditor can audit the books of accounts of a maximum 100 clients in a financial year. Out of these 100 clients, the number of public limited companies should not exceed ten. The above limit is applicable for each member of a partnership firm. Organizations not included while calculating the above limit are those whose annual turnover is less than NPR 2 million and: a proprietorship firm; partnership firm; cooperatives; government primary schools; religious organizations; social organizations; consumer groups; different committees; trade unions; professional associations; and other entities of a similar nature.

Forms of Business Organisations

Setting up a company in Nepal

The business structures that can generally be set up in Nepal are:

- Company (public, private and profit not distributing)
- Partnership
- Sole proprietorship
- Joint ventures
- Trust
- Branch and liaison office for foreign companies

In addition to the above, NGOs, INGOs, and religious charitable organizations can also be set up in Nepal under the Society Registration Act and Social Welfare Act of Nepal. For these organizations, the Social Welfare Council (SWC) of Nepal is the regulatory body in consonance with the ministries concerned depending upon the nature of welfare/charitable and religious activities to be undertaken by these organizations.

Forms of foreign investment that can be made in Nepal

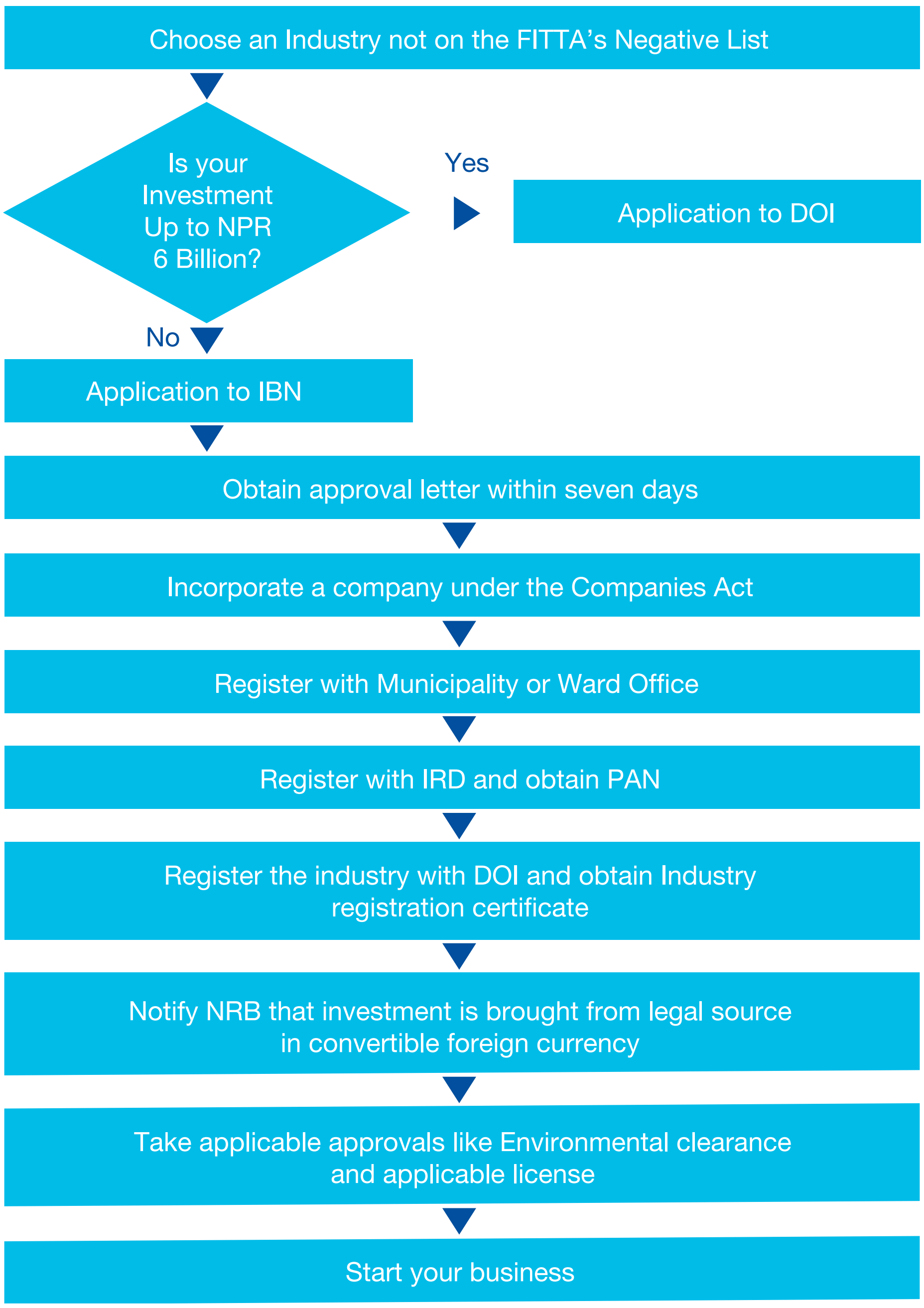
A foreign investor can invest in any permitted industry individually, jointly or through joint investment with a Nepalese citizen or company established in Nepal. The foreign investment in Nepal is regulated by the Foreign Investment and Technology Transfer Act (FITTA), 2019 & Industrial Enterprises Act, 2020 (IEA). FITTA has added the scope of foreign investment in the form of lease financing and investment in a secondary market through a venture capital fund (VCF) under the foreign investment including the opening of branch offices with the approval of the approving authority after completing all procedures required for foreign direct investment. Further, it has introduced the facility of Single Point Service Centre from where the investor can avail various services such as approval of foreign investment, registration, visa related services, work permits and so on.

Foreign investment in the following forms can be made in Nepal:

- Investment in shares of a company in convertible foreign currency
- Reinvestment of earnings from foreign investment

- Lease financing in airlines, ships, plant, machinery, construction and similar other equipment up to the prescribed threshold
- Investment in listed securities through the secondary market by venture capital fund
- Investment through acquisition of shares or assets of a company registered in Nepal
- Amount received by public or listed companies through banking channels by issuing securities in foreign capital market
- Investment made through technology transfer in an industry established in Nepal
- Investment through establishment and expansion of industry in Nepal
- Setting up a branch office

Any person setting up a profit motive company with foreign investment may set it up following these procedures:



Raising foreign currency loans

Any company with foreign investment can raise loans from foreign governments, banks and financial institutions to fulfil a project loan or project financing agreement (after obtaining approval from the Ministry of Industry, Commerce and Supplies and NRB). Similarly, the subsidiary companies with foreign investment can raise loans from their parent companies and associated companies of the group after obtaining approval from NRB.

Negative list of foreign investment

Foreign investment is permitted only in such sectors classified as 'industries' by the IEA with the exception of the following industries, which are included in the 'negative list' of the FITTA:

- Primary agriculture sectors such as fish farming, animal husbandry, horticulture and others
- Small and cottage enterprise
- Personal service business such as hair saloon, tailoring, driving and so on
- Arm and ammunition industry, industry producing biological and chemical weapons, industries related to explosives, gunpowder, radio-active materials and atomic energy
- Real estate businesses (excluding construction industries), retail business, internal courier services, local catering services, money changer and remittance services
- Travel agency, trekking agency expedition service provider, home stay and rural tourism
- Mass-media business such as newspapers, radio, television and online news
- Movies of national language
- Business and organizations providing management, accountancy, engineering and legal consultancy services and language training, music training and computer training
- Business having more than 51% foreign investment in consultancy services

Step 1: Approval of Department of Industry / Investment Board, Nepal

- **Project cost less than 6 billion:** Submit an application to Department of Industries for foreign investment approval
- **Project cost 6 billion or more:** Submit an application to Investment Board, Nepal for foreign investment approval

Permission is not granted for making foreign investment in the industries set forth in FITTA's 'negative list'. However, permission may be granted for the transfer of technology in such industries.

An approval letter will be provided within seven days from the date of the application if the application is complete in all respects.

In case an industry which has already obtained approval for foreign investment wishes to make reinvestment from the earned profits in the same industry or in any industry other than those included in the 'negative lists', it is not necessary for it to reobtain approval on foreign investment. However, the matter requiring license or permission under the prevailing law for the purpose of registration of an industry or company or tax or any other business shall be governed accordingly.

Below are the required documents to be submitted for approval of FDI:

a) Investment report and project report – two copies

b) Joint venture agreement, if more than one investor exists

c) Copy of the personal bio-data, if the investor is an individual

d) Legal documents of investor, profile and board resolution in case foreign investor is a company

e) Legal documents, partnership agreement, profile of firm and partners' decision in case of partnership firm

f) In case of Non-Resident Nepali (NRN), documents to support of NRN status

g) Charter documents and documents revealing identity of directors in case of international organization

h) Power of Attorney (POA) 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 in the POA as required by the law

i) Any other document that is requested by the approving authority

Step 2: Company registration

After receiving approval for foreign investment, investors will need to register an appropriate form of company in the OCR.

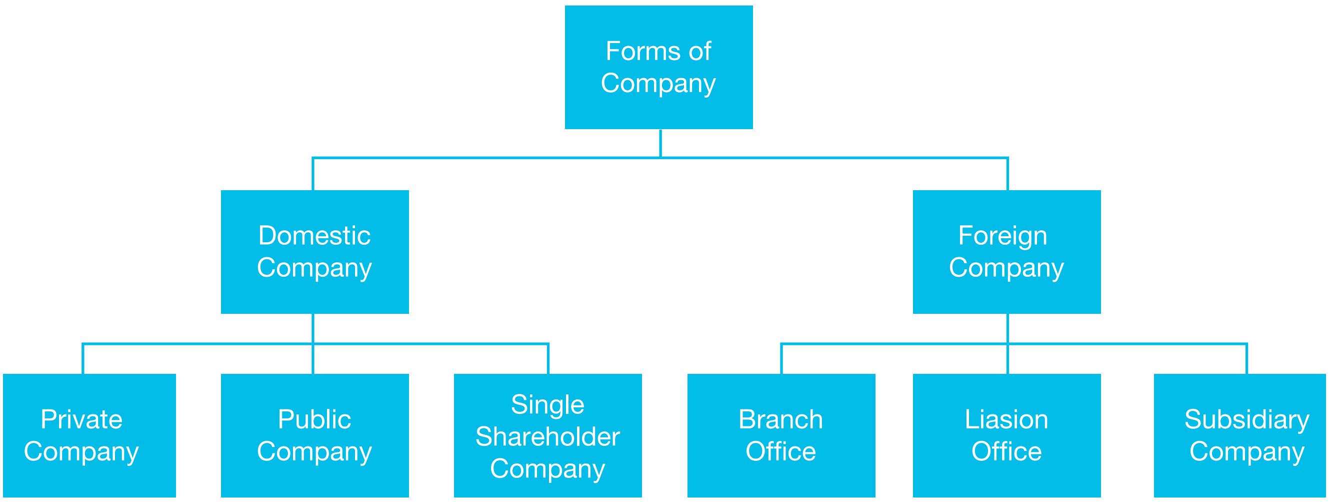


Chart 1: Forms of company

Domestic company

Companies incorporated under the Companies Act fall into two broad categories: private companies and public companies. There is also the concept of a single shareholder company.

A company may be incorporated under the Companies Act using the following alternative modes:

a) Incorporating a Nepali company with 100% foreign equity, operating it as a wholly owned subsidiary or with more than one foreign equity partner

b) Incorporating a joint venture company with a Nepali partner and operating it as a private company or a non-listed public company

c) Incorporating a joint venture company with a Nepali partner, and/or with the general public, and operating as a public company listed on the stock exchange

a. Private company

A private company is a company that has a restriction on the right to transfer shares, has a limit of 101 shareholders, and cannot sell its shares or debentures to the general public. All private companies must add the words “private limited” to its name. Certain facilities and relaxations in compliance are however enjoyed by a private company compared with a public company.

b. Public company

A public company is a company that is not a private company. Public companies must have a minimum of seven shareholders as signatories to the MoA, and have a minimum paid-up capital of NPR 10 million. The paid-up capital can however be higher for companies that are regulated by other regulations; for example, a company carrying on a business involving banking, financial transactions, insurance, stock exchange, pension funds or mutual funds.

Compliance under the Companies Act is more stringent for public companies compared with private companies. A public company may be a listed company (for instance, its shares may be listed on a stock exchange and traded).

c. Single shareholder company

The Companies Act permits the incorporation of a company with only one shareholder. All the acts and decisions normally required to be performed by a board of directors, or at a general meeting of the company, is decided in writing by the shareholder, and therefore no such meetings are required to be called for this type of company.

Domestic company registration procedure

An investor should make an application to the OCR in the format prescribed along with the following documents for the incorporation of the company with foreign promoters and shareholders under joint investment or as a wholly owned subsidiary:

- the memorandum of association of the proposed company;
- the articles of association of the proposed company;
- in the case of a public company, a copy of the agreement – if any – entered into between the promoters prior to the incorporation of the company;
- in the case of a private company, a copy of the consensus agreement – if any – entered into;
- where prior approval or a license has to be obtained from anybody under the prevailing law prior to the registration of a company carrying on any particular type of business or transaction pursuant to the prevailing law, such approval or license,
- a copy of the permission obtained under the prevailing law to make an investment or carry on business or a transaction in Nepal;
- a copy of the Department of Industries and Joint Investment agreement, in the case of an industrial company under joint investment;
- where the promoter is a foreign person, evidence of country of citizenship;
- where the promoter is a foreign company or body, a certified copy of the incorporation of the company or body and charter documents relating to the incorporation.

Step 3: Registration with IRD, DOI and local authority

Following the company registration, the entity (business) will be registered with the local authority. The entity thereafter shall obtain a permanent account number (PAN) and also register with VAT, if applicable, from the Inland Revenue Department. The industry should then be registered with the DOI and an industry registration certificate obtained.

Step 4: Inject capital in the Nepal entity

The foreign investor, on obtaining approval of the foreign investment in an industry from the approving authority, should inject the investment committed within one year in the following tranches. The foreign investor shall notify in writing to the Central Bank that the investment has been made through the banking channel and account for its investment within six months thereof. Prior approval of the Central Bank is no longer required to inject and repatriate foreign investment, except through sale/purchase of shares, after the approval of FDI has been obtained from the approving authorities.

Investment committed	% of investment
a) Minimum investment of NPR 50 million	25% of the total amount
b) Above NPR 50 million to NPR 250 million	15% of the total amount
c) Above NPR 250 million to NPR 1 billion	10% of the total amount
d) Above NPR 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 two 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.

Step 5: Start your business

Take other applicable approval like environmental clearance and applicable licenses and start your business.

Foreign company

Foreign companies are companies that are incorporated outside Nepal (100% foreign owned) and have established a place of business in Nepal. A foreign company's place of business in Nepal includes a liaison office or branch office of such companies or its subsidiaries.

Foreign companies must register with the OCR within 30 days of the establishment of a place of business in Nepal or the appointment of a resident agent to deal with matters on behalf of the company. The registration procedure of a foreign company has been described in the "Opening a branch" section.

Opening a branch

Foreign companies may operate in Nepal by opening a branch office or liaison office subject to approval from a competent government authority.

a. Branch office

Foreign companies may operate in Nepal by opening a branch office subject to approval from a competent government authority. Following approval, an application in the prescribed form should be made to the OCR to register the branch office and the appropriate fee paid.

b. Liaison office

A liaison office can be established by a foreign company in Nepal under the Companies Act. At the time of registration, the OCR may direct the foreign company to seek a specific authorization. For instance, in the case of a power company, permission must be obtained from the Department of Electricity Development (DOED) to operate in Nepal.

A liaison office is not permitted to carry out any income earning activity in Nepal and all its expenses are required to be met through inward foreign currency remittances.

Following approval, an application to the OCR in the format prescribed in Annexure 29 of the Companies Act along with the following documents should be submitted for the establishment of a liaison office or branch office:

- copies of the charter, certificate of incorporation, memorandum of association, articles of association of the company, and Nepalese translation thereof;
- full name and address of the registered office and principal place of business of the company, date of incorporation, description of the paid-up capital and major objectives of the company;
- names and addresses of directors, manager, company secretaries or main officers of the company and description of their citizenship;
- name and address of the person residing or staying in Nepal, who is authorized by the company to receive, on its behalf, any summons, notice and so on issued in the name of the company;
- full address of the principal place where the company carries on its transaction or business in Nepal and of the office of the company situated in that place;
- details of the proposed investment and transaction to be made in Nepal;
- the proposed date of commencement of the transaction in Nepal;
- a declaration made by a director of the company or his/her representative, on behalf of the company, that the matters contained in the returns submitted by the company are true and correct;
- power of attorney as referred to in Section 157 of the Companies Act.

Royalty threshold

Ceiling on royalty and other fees

A 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% and 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:

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

b) Ceiling of royalty amount or other fees for use of 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

Issue of identity cards to the foreign investor

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

About investment	Classification
a) NPR 50 million to NPR 250 million	General foreign investor
b) Above NPR 250 million to NPR 1 billion	Special foreign investor
c) Above NPR 1 billion	Most special foreign investor

Exit from the industry

A foreign investor can exit from its investment in an existing industry by either of the following approaches:

Voluntary liquidation of a company

A company may be voluntarily liquidated under section 126 of the Companies Act. Where a voluntary liquidation is not possible or desired, a company may still be liquidated under the Insolvency Act, 2006 where certain circumstances are met. Voluntary liquidation of a company requires the passing of a special resolution at a general meeting, or it may be liquidated pursuant to satisfying the conditions stipulated in the company's MOA/AOA.

Sales of shares

Another approach for exit is to sell the shares in an existing industry to a local investor or another foreign investor for which approval from the DOI shall be obtained and sales proceeds repatriated after obtaining approval from NRB on depositing the capital gains tax on the transaction, if any.

After obtaining approval from the NRB, the investor may repatriate the amount abroad.

Purchasing shares in existing company

A foreign investor can invest in the equity shares of a company in Nepal after obtaining approval from the Securities Board of Nepal (SEBON) by establishing a venture capital fund (VCF). However, the procedures for setting up a VCF is yet to be introduced by SEBON.

Entities establishing a VCF may transact in securities through the stock exchange's secondary market after registering with SEBON. The minimum shares to be purchased, the investment limit, minimum share holding period and foreign currency reserve fund is yet to be prescribed.

Purchasing real estate property in Nepal

An entity with approved foreign investment can acquire land for setting up an industry, or alternatively lease land for this purpose. Where land cannot be identified by the investor, or where the land required is in excess of the prescribed ceiling, the approval authority will provide necessary arrangement, approval and facilitation to identify the required land.

Land acquisition

Land may be acquired in the name of the entity for the purpose of setting up a manufacturing industry in the following ways:

1. Private land

   To obtain land or buildings owned by private individuals, the investor must negotiate with the owner to either purchase or lease the land. Under the existing law, foreign individuals are not permitted to acquire property, but companies established with foreign investment can purchase and own land in Nepal. The purchase deeds are registered at the Land Revenue Office.

2. Forest land

   If forest land needs to be obtained, the investor must follow the process prescribed by the Ministry of Forests and Soil Conservation. The ministry may ask for an equal amount of private land to be procured for use as forest land and afforestation in the same area.

3. Government (non-forest land)

   In the case of government (non-forest) land, it can be leased by the investor according to the Land Leasing Policy, 2014. Lease terms range from 10 to 50 years. The lease can be renewed after the term expires.

Public Private Partnership and Investment Act, 2019

With the objective of encouraging private investment in various priority projects, the GoN introduced the Public Private Partnership and Investment Act, 2019. One of the prominent areas where the public private partnership (PPP) is prevalent is the hydropower sector.

Infrastructures covered under the Act

Infrastructures (for example, roads, tunnels, bridges, canals, dams, sewerage, cable cars, railways, tramways, metro rail, mono-rail, sky rail, trolley bus, rapid bus transit, dry port, dock, airports, hospitals, cold stores, stadiums, entertainment parks, waste treatment plants, telecommunication, agriculture, education and so on) and other infrastructures of similar nature are covered by this law.

Investment approval

Investment above NPR 6 billion shall be approved by the Investment Board, Nepal (IBN), whereas investments up to NPR 6 billion are approved by the DOI. For the purposes of implementing a project, the authorities responsible are:

a) Local Level Government: For projects within the jurisdiction of local level government.

b) State Government: For projects within the jurisdiction of state government.

c) Respective Ministry of GON: For projects except hydroelectric project which cost up to NPR 6 billion and for hydroelectric project which has capacity up to 200 MW.

d) Investment Board: For projects except hydroelectric project above NPR 6 billion and for hydroelectric project which has capacity beyond 200 MW.

Forms of private investment

The private investments can take any of the following forms:

a) Build and Transfer (BT)

b) Build, Operate and Transfer (BOT)

c) Build, Own, Operate and Transfer (BOOT)

d) Build, Transfer and Operate (BTO)

e) Lease, Operate and Transfer (LOT)

f) Lease, Build, Operate and Transfer (LBOT)

g) Develop, Operate and Transfer (DOT)

h) Manage, Operate and Transfer (MOT)

i) Re-establish, Operate and Transfer ROT)

License period

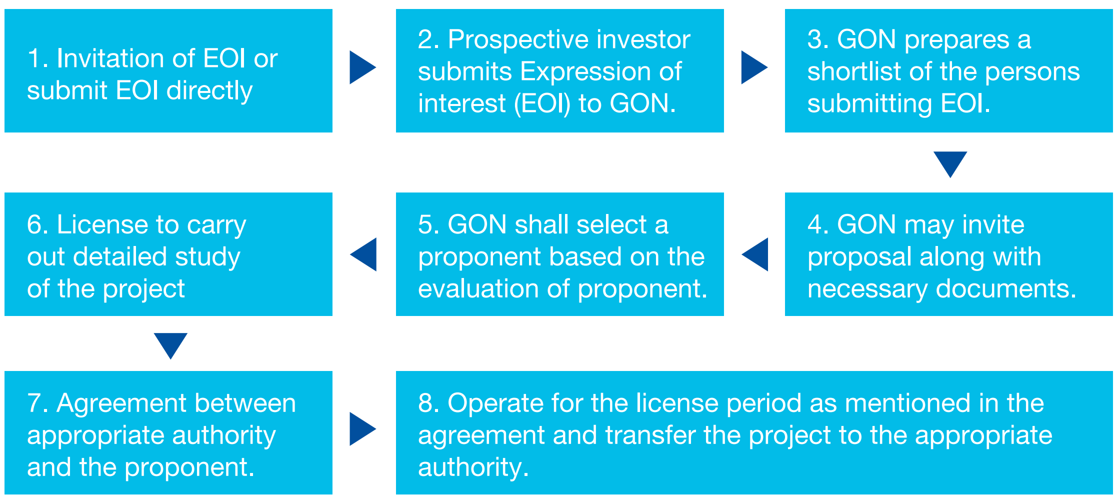
The license period shall be as specified in the respective agreement. In the Private Financing in Build and Operation Infrastructure Act, 2006, the license period was for a maximum of 30 years, which could be extended for an additional period of five years under special circumstances. However, the new Public Private Partnership & Investment Act is silent regarding the license period.

Invitation of EOI by GON

The GoN may, if it deems appropriate to implement any project in PPP, invite the private developers or operators through an Expression of Interest (EOI) to participate in the infrastructure project in accordance with the provisions specified in the law.

Process

The process for undertaking an infrastructure project under this law is as follows:



This process is set out in more detail below.

- The appropriate authority (Investment Board, GON, State Government or Local Government) will shortlist projects in which a PPP is sought.
- The list of projects will be published and an EOI is invited for the study permission, survey or implementation of the project. Alternatively, any entity desirous of implementing a project under this Act may submit their EOI directly to the appropriate authority (without having received any public notice).
- An entity desirous of submitting an EOI should furnish the required details within the stipulated time stated in the notice.
- The appropriate authority, after the preparation of a shortlist of potential candidates, will publish a public notice and invite proposals.
- The appropriate authority will, after evaluating the technical proposal, the proposed royalty and the financial proposal (including details of tariffs to customers), select the proposing entity.
- The appropriate authority will grant a license to carry out the detailed study of the project and will obtain a performance bond from the proponent.
- The entity enters into a PPP agreement with the respective authority. Such an agreement includes the details of project, the commencement and completion date, the facilities and the exemptions, the license period, milestones, a timetable, technical standards and quality, the conditions to transfer the project to the appropriate authority, royalties and so on.

Industrial Enterprises Act 2020

To establish an industry under the Industrial Enterprises Act, 2020 (IEA), an application form must be submitted in the prescribed form to the DOI (for registration of industries) along with the documents relating to: approval of foreign investment, incorporation of the company, registration in the municipality, PAN certificate, scheme of arrangements and so on. The DOI, after examination, and being satisfied that all the prescribed documents and information has been received and all the specified procedures for registration and any directive laws, have been complied with will, within 15 days from the date of the application, register such an industry and issue an industry registration certificate to the applicant. After obtaining the certificate of registration, if there may be an effect on the environment, the applicant must conduct an environmental impact assessment (EIA)/ initial environment examination (IEE) test first, before the commencement of operations.

Environmental clearance

Manufacturing entities may have to conduct an EIA or an IEE.

Environmental impact assessment (EIA)

An EIA is required for manufacturing entities that are likely to have greater environmental consequences (those that fall under Schedule 2 of Environment Protection Rules, 1997) and involves the preparation of a scoping document before finalizing the terms of reference and conducting a detailed study on the impacts of mitigation measures.

During the EIA study, it is mandatory to conduct a public hearing at the project affected area. The EIA is then submitted to the concerned department or ministry, which will forward it to the Ministry of Population and Environment for approval.

Initial environment examination (IEE)

An IEE applies to manufacturing entities that have less of an environmental impact (those that fall under Schedule 1 of Environment Protection Rules, 1997).

An IEE involves the preparation of terms of reference, followed by an analytical study of the impacts and mitigation measures. The IEE is then submitted to the concerned department or ministry for approval.

Classification of industry

By size	By nature
1. Micro 2. Cottage 3. Small 4. Medium 5. Large	1. Energy-based 2. Manufacturing 3. Agro forest-based 4. Mineral industry 5. Construction industry 6. Tourism industry 7. Information technology information, information transmission and IT service-based industry 8. Service oriented industry

Corporate social responsibility (CSR)

All large and medium industries, including small and cottage industries with an annual turnover in excess of NPR 150 million, are required to allocate at least 1% of their annual profit for the purpose of CSR. The progress report of the utilization of the fund collected for CSR is required to be submitted to the DOI/DCSI within three months from the end of the financial year. The Industrial Enterprises Rules, 2019 has specified these eight areas on which CSR activities can be focused.

a) Natural disaster prevention and rescue related activities

b) Providing medicine and health equipment to community health organizations, conducting heath awareness programs, health camps and other health related activities

c) Preservation and conservation of Nepali art, cultural heritage and monuments

d) Skill development and income generating programs for people with low income, from backward areas, rural women, differently abled, minority groups and marginalized society

e) Scholarships for community schools and universities, distribution of educational equipment and materials, and other activities related to development of education sector

f) Pollution control, waste management, tree plantation, preservation of water source, alternative energy promotion and other environment conservation activities

g) Production and broadcasting of documentaries and awareness programs against social disorders such as smoking and drinking

h) Construction of rural drinking water, road, drainage and sewage, patipauwa, old age home, sports ground, religious site, community health building, other community building (including its repair and maintenance), orphanage, park, meditation centers, bus park, bus stand, other physical infrastructure for social welfare

i) At least 25% of the set aside CSR amount should be expensed in the areas affected by the industry

j) Industry can deposit an amount (limited to a maximum 10% of the set aside amount for CSR) in any fund recommended by the DOI and such deposited amount can be claimed as expensed from related planned CSR areas

Taxation

Nepali tax system

The GoN raises its revenue via various direct taxes (such as income tax, wealth tax, local taxes and so on) and indirect taxes (such as VAT, excise duty, customs duty and so on). All businesses come across most of these taxes while operating in Nepal.

Income tax is levied on income accrued or received from a business, investment, employment, windfall gains and any other sources in the course of operating a business. All individuals and legal entities with assessable income are required to register with the Income Tax Authorities of Nepal – Inland Revenue Department/Office (IRD/IRO) – obtain a Permanent Account Number (PAN), and file an income tax return annually. The IRD is the primary tax authority in Nepal. Both individuals and companies are required to follow a uniform income year that runs from 16 July to the following 15 July.

Other than these, indirect taxes such as VAT, customs and excise duties levied also impact doing business scenarios and decision making in Nepal though these are ultimately passed on to customers. The regulatory body for the administration of taxes such as VAT and excise duty is also the IRD, whereas the Department of Customs regulates customs duty collection and its administration.

Different laws dictate the provisions for implementation of these taxes. Some key takeaways of these Acts are:

- the tax liability of residents and non-residents are clearly defined;
- global income of a resident, whether an individual or a company, is now made taxable in Nepal;
- specific provisions for taxing capital gains are introduced;
- procedures for the granting of credit for international tax are prescribed;
- concessions and incentives are defined;
- general anti-avoidance provisions and income splitting rules have been introduced;
- tax administration, compliance, and payment procedures are provided and clearly defined;
- has concluded Double Taxation Avoidance Agreements (DTAA) with 11 different countries.

Corporate tax (IS)

Tax is levied under the Income Tax Act, 2002 (ITA), which provides for the imposition and collection of tax on the income of entities.

Resident entities are subject to tax on their worldwide income. Non-residents are required to pay tax on their net income acquired or earned in Nepal or income received from Nepal. Tax is levied on the net income after making deductions for certain expenses and allowances as specified in the Act.

For the purpose of the ITA, entities include any partnership firm, trust or company, public or international association established under bilateral/multilateral treaties with forging government, or any local bodies of foreign government and permanent establishment of non-resident persons included above.

“Company” means a body corporate or a company formed under the Companies Act and includes a foreign company and other institutions such as a unit trust, cooperative society, or group of persons other than a partnership having less than 20 partners, and proprietorship firm.

A “partnership” is a group of persons carrying on a business jointly; having fewer than 20 partners. A partner is characterised as having (like a beneficiary) an interest in the firm.

Distribution of profits by a firm to its partners is taxed as dividend at 5% which is a final withholding tax.

Tax rates in Nepal

#	Particulars	FY 2020-21		
		Normal rate	Rebate	Applicable rate*
1	Normal business	25%	-	25%
2	Entities operating as Special Industry under section 11 of ITA for whole year	25%	20%	20%
3	Entities constructing and operating ropeway, cable car or sky bridge	25%	40%**	15%**
4	Entities constructing and operating roads, bridges, tunnel, railway and airports	25%	50%**	12.5%**
5	Entities operating trolley bus or trams	25%	40%**	15%**
6	Entities with export income from source in Nepal	25%	20%	20%
7	Entities involved in construction or operation of public infrastructure and to be transferred to GoN or involved in construction of hydropower house and its generation and transmission	25%	20%	20%
8	Banks and financial institutions (commercial banks, development banks and finance companies)	30%	-	30%
9	Entity carrying on general insurance business (non-life insurance)	30%	-	30%
10	Entity engaged in petroleum business under Nepal Petroleum Act, 2040	30%	-	30%
11	Entity engaged in business of cigarette, tobacco, cigar, chewing tobacco, pan masala, alcohol and beer	30%	-	30%
12	Entity engaged in telecommunication and internet service	30%	-	30%
13	Entity engaged in money transfer business	30%	-	30%
14	Entity engaged in capital market business, securities business, merchant banking, commodity future market, securities and commodity broker	30%	-	30%

*Above industry-wise applicable tax rate is presented after considering concession available under section 11 of Income Tax Act, 2002 (ITA) except for entities falling under tax holiday period. However, in case of special industry and industry other than presented above, entity can choose any one tax concession available under section 11 of ITA.

**Rebate and concessional tax rates applicable only up to 10 years from date of commercial operation.

Annual tax returns

All taxpayers (assessees) are required to adopt a uniform income year ending 15 July and submit their tax return within three months from this year end (for instance, by 14 October of each year). An extension of three months may be requested and is generally granted.

The financial statements (accounts) shall be audited by an auditor holding a certificate of practice. Tax returns shall be certified by the auditor and submitted along with the audited accounts within the stipulated time.

If there is any discrepancy in the income tax return submitted by a person within the due date, the return can be amended within 30 days from the date of filing of the return.

Advance tax

Income tax shall be paid in three advance instalments by all entities during an income year. The payment deadlines are 14 January, 13 April and 15 July.

The income tax to be paid should be calculated at the applicable rates on the estimated profits of the entity for the entire year. Advance tax shall be deposited as follows:

Particulars	Due date	% of estimated tax liability
1st instalment	Mid-January	40% of the total estimated tax liability for the year
2nd instalment	Mid-April	70% of the total estimated tax liability for the year
Final instalment	Mid-July	100% of the total estimated tax liability for the year

Tax payments and refunds

Income tax payments are made in the year in which the income is earned in the form of withholding tax and advance tax.

The taxpayer is required to estimate its taxable income and make advance payments in three instalments spread over the year. Income from services including contract payments is subject to tax withholdings that may be adjusted for the purposes of calculating advance tax. Arrangements have been made by the IRD to refund (within 60 days) the excess money deposited by taxpayers (this may take longer in practice).

Withholding taxes

Under Chapter 17 (Sections 87 to 93) of the ITA, the payer (withholding agent) is required to withhold taxes (deduct TDS) on certain specified payments at the prescribed rate. Should the payer (withholding agent) fail to withhold tax, it will be subject to a penalty (including interest).

Withholding tax rates vary from 1.5% to 25% depending on the nature of payments. Withholding taxes are either advance withholding taxes or final withholding taxes based on the nature of the payments.

General anti-avoidance rules

The ITA contains general anti-avoidance rules, which gives authority to the IRD to:

- re-characterise an arrangement, or part of an arrangement, that is entered into or carried out as part of a tax avoidance scheme;

- disregard an arrangement, or part of an arrangement, that does not have substantial economic effect; or
- re-characterise an arrangement, or part of an arrangement, the form of which does not reflect its substance.

For the purposes of these provisions, a ‘tax avoidance scheme’ means any arrangement, one of the main purposes of which is the avoidance or reduction of the liability to tax.

Transfer pricing

In any arrangement between persons who are associates (related parties), the IRD may, by notice in writing, distribute, apportion or allocate amounts to be included or deducted in calculating the income between the persons as is necessary to reflect the taxable income (or tax payable) that would have arisen for them if the arrangement had been conducted at arm’s length.

The IRD may:

- re-characterise the source and type of any income, loss, amount, or payment; or
- allocate costs, including head office expenses, incurred by one party in conducting business with their associate or associates (related party or related parties) based on the comparative turnovers of the businesses.

Double taxation avoidance agreement (DTAA)

Nepal has concluded tax treaties (DTAAs) with 11 countries (Austria, Bangladesh, China, India, Korea, Mauritius, Norway, Pakistan, Qatar, Sri Lanka and Thailand).

The purposes of tax treaties are to avoid international double taxation on the same income and to prevent tax avoidance. Generally, tax treaties include the following rules:

- The definition of a resident, non-discrimination rule, source of income rule
- Rules on the taxation of a permanent establishment, taxation of business income, and income from international transportation
- The definition and taxation rules for dividends, interest, royalties, real estate income and capital gains
- Rules on the taxation of independent professional income, employment income and tax-exemption on short stay, professors, students, government officers and diplomats
- The mutual consultation by competent authorities and the exchange of information

Personal income tax (IRPF)

Tax on individuals is levied under the ITA and based on the residential status of the individual in Nepal. Resident individuals are subject to tax on their worldwide income derived from employment, business or investment in Nepal while non-residents are subject to tax on their net income earned or sourced in Nepal.

A person is deemed resident in Nepal if they have resided in Nepal for a period of 183 days or more in any 12-month period, or their normal place of abode is in Nepal. Dual residence is not recognised for purposes of Nepalese tax.

There is no separate provision for taxing the income of short-term visitors. Depending on the duration of stay, they will be classified as resident or non-resident and Nepal sourced income shall be taxed accordingly.

Tax rate for resident

The applicable tax rates for the resident individual of Nepal shall be as follows:

Tax banding	Tax rates for the NFY 2020-21			
Resident	Individual		Couple	
a) First Slab	400,000	1%*	450,000	1%*
b) Second Slab	100,000	10%	100,000	10%
c) Third Slab	200,000	20%	200,000	20%
d) Fourth Slab	1,300,000	30%	1,250,000	30%
e) Balance Exceeding NPR 2,000,000	> 2,000,000	36%	> 2,000,000	36%

*1% is the social security tax to be deposited in a separate revenue account (11211). However, taxpayer registered as sole proprietorship or on pension income or on income from contribution-based pension fund or social security fund (SSF) shall not attract social security tax.

Non-resident income tax (IRNR)

Non-residents are taxed at 25%, except for income from transporting passengers, mail or cargo by sea or air that is embarked in Nepal (online), which is taxed at 5%, whereas for offline services (for instance, services that do not originate in Nepal) the tax rate is 2%.

Non-resident person shall be taxed at a flat rate of 25% on the remuneration earned from source in Nepal.

Capital gains tax (IP)

In Nepal there is no wealth tax. However, capital gains taxes are applicable on disposal of business assets and liabilities under the ITA.

Net gains from the disposal of business assets or liabilities of a business are taxable as business income. Generally, gains are calculated as proceeds from the capital transaction less the tax basis in the relevant property. In the language of the ITA, the gain from the disposal of an asset or liability is calculated as the amount by which the sum of the incomings of the asset or liability exceeds the outgoings of the asset or liability at the time of disposal and is reduced by the following losses:

- the total of all losses suffered from the disposal of business assets or liabilities;
- any unrelieved net loss out of any other business losses; and
- any unrelieved net loss for a previous income year out of losses of any business.

Loss on the disposal of an asset or liability with a foreign source can be claimed against the above gain only to the extent that the amount includes gains on the disposal of assets or liabilities with a foreign source. A non-resident is taxed only on gains from the disposal of assets or liabilities sourced in Nepal. However, based on a recent court ruling and amendments in the law, non-residents are taxed also on gains that do not have source in Nepal.

Net gain derived in respect of disposal of shares listed on the stock exchange is subject to tax at the rates of 7.5% on short term capital gain (for shares held up to 365 days) and at the rate of 5% on long term capital gain (for shares held more than 365 days) in case of resident natural persons and 10% and 25% for resident natural persons, resident entity and others, respectively, and whereas in case of unlisted shares, tax at the rate of 10%, 15% and 25% is applicable for resident natural persons, resident entity and others, respectively.

Net gain derived from the disposal of land and building is subject to tax at the rate of 2.5% if owned for more than five years and 5% if owned up to five years for a natural person. Net gain on the disposal of land and building is subject to 10% for a person other than a natural person irrespective of period of holding.

The land and buildings owned in Nepal are subject to property tax, to be levied by the local government (based on the predetermined rates for the areas in which the properties are located) on an annual basis.

Inheritance and gift tax (ISD)

An asset disposed of by way of transfer in any manner other than a purchase and sale, within three generations, is excluded from the scope of income tax.

Gifts received in respect of the business are included in the income of the business and taxed accordingly. Similarly, windfall gains are taxed and withheld at a rate of 25%, which is a final withholding tax.

Value added tax (VAT)

VAT in Nepal is governed by Value Added Tax Act, 1996 and Regulation, 1997.

VAT is an indirect tax, which means the person making the payment of tax does not directly deposit the tax in the government treasury.

VAT applies to the following transactions:

- supply of goods or services within the state of Nepal;
- import of goods or services inside the state of Nepal; and
- export of goods or services from the state of Nepal.

VAT is charged on the import and supply of goods and services at each stage of production and distribution, unless specified by the law as tax exempt. As a multi-stage tax, VAT is applied throughout the supply chain and is transferred from stage-to-stage until the end-consumer ultimately bears the full cost.

Broadly, in a period, VAT registered entities must deduct VAT included on VAT invoices from their suppliers, or paid on imports, from the VAT they charge on VAT invoices to their customers. The net amount remaining in a period will then be paid to the government treasury or, where more VAT has been invoiced to the entity or paid by it over that which it has been charged its customers, a VAT credit (refund) may be claimed.

Requirement for VAT registration

VAT shall only be collected by a person who is registered for VAT purposes. Section 10 of the Act has prescribed the conditions for compulsory registration for VAT purposes:

1. Compulsory registration due to exceeding the turnover threshold:

   The condition requiring compulsory registration arises only when the turnover of the person exceeds the limit as follows:

   - For a person dealing only in goods: NPR 5 million during last 12-month period
   - For a person dealing only in services: NPR 2 million during last 12-month period
   - For a person dealing only in goods and services: NPR 2 million during last 12-month period

2. The existing provision related to compulsory registration of specified business based on their nature, regardless of turnover threshold has been withdrawn through Finance Ordinance, 2078.

3. Where the transaction of goods or services of a person becomes taxable the person shall make an application in the prescribed format for the purpose of registration with the tax officer within 30 days of transaction being taxable.

Rate of VAT

The rates of VAT are as follows:

- Items specified in Schedule 1 of the Act (VAT exempted): No VAT
- Items specified in Schedule 2 of the Act (exported goods or services): 0%
- For all other items (not specified in Schedule 1 and 2): 13%

Tax credit

To avoid double taxation, a credit is given for VAT paid on goods and services used for the purpose of making any taxable supply (input VAT).

A refund is also given for VAT paid in respect of certain exempt supplies (for example, exports).

The principal mechanism for collecting the tax requires the taxable supplier to charge VAT on the goods or services supplied (output VAT), to take credit for VAT paid on business expenditure (input VAT), and to pay the net tax over to the authorities.

Requirements under VAT

VAT registrants are required to:

- submit VAT returns (and pay any VAT) by the 25th day of the following month;
- provide their customers with a tax invoice;
- maintain a purchase book, sales book and VAT account;
- keep their VAT records for a period of seven years;
- inform the IRD of changes to the business including a new address, telephone number or a reorganisation of a partnership, within 15 days.

Government bodies or entities in which the government has full or partial ownership, while making payment for contract, services or goods procured, shall deposit 50% of the VAT amount directly to the IRD on behalf of the supplier and only the remaining 50% VAT amount shall be paid to the supplier.

Capital transfer tax and stamp duty (ITP and AJD) special tax and duties (IIEE)

Dividends distributed by a resident company and partnership firms are subject to a final withholding tax at the rate of 5% to the resident and the non-resident person. These dividends are not taxed at the level of the recipient and no withholding is applicable on distribution of dividends from dividend income. Dividends of a non-resident entity, which are distributed to a resident beneficiary, are taxed by inclusion in calculating the income of the beneficiary. Distributions of dividends, which are derived after the final withholding tax, are exempted from tax.

Tax shall be levied at the rate of 5% on the income sent abroad by any non-resident person's foreign permanent establishment situated in Nepal in any income year.

Special tax and duties (IIEE)

Special economic zone

The GoN aims to attract native and foreign investment by establishing special economic zones (SEZ) in potential places for exportable industries. The GoN can prescribe any export processing area, special business area, tourism or entertainment area or any other area of Nepal as a SEZ.

Certain privileges are provided in the SEZ laws, in terms of exemptions, facilities, tax benefits and so on, to industries in SEZ, some of which are:

a) special treatment for goods or services produced in SEZ;

b) no nationalisation shall be made;

c) discount on the lease or rent of land or building;

d) exemption from income taxes, value added taxes, excise duty, customs duty and local taxes;

e) selling of raw materials or products to any industries in SEZ by any other industries will be deemed as export and such industries can enjoy facilities available for export;

f) the foreign investment may be repatriated;

g) relaxation in visa provisions;

h) use of bonded warehouse; and

i) sub-contracting within industries and accelerated rate of depreciation shall be available, along with such other facilities as may be specified by the GoN from time to time.

Incentives in income tax rates

The tax laws provide various incentives to stimulate industrial growth and development. Following are the key tax incentives, inter alia, designed to attract inward investment:

#	Industry	Tax rates and incentive
1	**Concessions based on employment provided**	
	Special industries and information technology industries providing direct employment to 100 or more Nepalese citizens throughout the year	*10% of AR/NR
	Special industries and information technology industries providing direct employment to 300 or more Nepalese citizens throughout the year	*20% of AR/NR
	Special industries and information technology industries providing direct employment to 500 or more Nepalese citizens throughout the year	*25% of AR/NR
	Special industries and information technology industries providing direct employment to 1000 or more Nepalese citizens throughout the year	*30% of AR/NR

*Additional 10% concession is provided if direct employment is provided to 100 or more Nepalese citizens including at least 33% of women, oppressed or handicapped person.

#	Industry	Tax rates and incentive
2	**Concessions to special industries based on geographical locations**	
	Special industries established in very undeveloped areas	90% of the AR (for ten years from the date of commercial production)
	Special industries established in undeveloped areas	80% of the AR (for ten years from the date of commercial production)
	Special industries established in less developed areas	70% of the AR (for ten years from the date of commercial production)
3	**Concessions to special industries based on investment amount**	
	Special industry and tourism industry (except casinos) with capital investment of NPR 2 billion or more and providing direct employment to more than 300 persons throughout the year	100% exemption for first five years from the date of operation of business and 50% concession for the next three years
	For the existing special and tourism industry (except casinos) that increases its installed capacity by 25% to reach a capital of NPR 2 billion, and provides direct employment to more than 300 persons throughout the year	100% concession for first five years and 50% concession for the next three years on income generated due to increased capacity
	Industry related to tourism industry or international flight operation established with capital investment of more than NPR 2 billion	100% concession for five years from commencement of business and 50% concession for the next three years
4	**Concessions to industry established in SEZ**	
	Industry established in SEZ in mountain areas or hill areas by the GoN	100% exempt up to ten years from date of operation of business and 50% rebate in subsequent years
	Industry established in SEZ other than above locations	100% exempt up to first five years from date of operation and 50% rebate in subsequent years
	Dividend distributed by the industry established in SEZs	100% exempt for first five years and 50% rebate in subsequent three years
	Income derived by the foreign investors from investment in SEZ (source of income-use of foreign technology, management service fee and royalty	50% of NR
	Special industries established and operated in industrial districts and industrial villages	25% exempt for first five years from date of operation
5	**Concessions based on establishment in special area**	
	Entity established in zoological, geological, biotech park and IT park engaged in software development, data processing, cyber café or digital mapping	50% on NR

#	Industry	Tax rates and incentive
6	**Concession related to hydropower project**	
	Person or entity having licence to generate, transmit or distribute electricity shall be provided concession if the commercial operation commences before April 2024. (Provisions shall be applicable for electricity generated from solar, wind or organic material)	100% exempt up to ten years and 50% rebate in subsequent five years from the date of commercial production
7	**Concession to petroleum industry**	
	If person involved in exploration and extraction of minerals, petroleum products, natural gas and fuel and starts commercial operation by April 2024.	100% exempt up to seven years and 50% rebate in subsequent three years
8.	**Other specific concessions**	
	On capitalisation of accumulated profit through bonus share by special industry or industry related with tourism for expansion of capacity of industry	No tax on dividend distribution
	Income from export of manufactured goods by manufacturing industries	Additional concession of 25% on rate derived after normal concession
	Income of manufacturing industry, tourism service industry and hydropower generation, distribution and transmission industry listed in capital market and entities mentioned in section 11(3 Ga)	15% on AR/NR
	Private company with capital of NPR 50 million or more which conducts its operation by converting into public company	10% on AR/NR for three years from the date of conversion
	Domestic tea production and processing industry, dairy industry, garments industry	50% on AR
	Health institution operated by community-based organisation	20% on NR
	Micro entrepreneurial industry	100% on NR for seven years from the date of operation
	Micro entrepreneurial industry if it is under entrepreneurship of woman	100% on NR for ten years from the date of operation
	Industry established in very undeveloped and undeveloped areas producing brandy, wine, cider from fruits	40% and 25% on NR for ten years from the date of commercial production
	Royalty from export of intellectual asset by a person	25% on NR
	Income from sale of intellectual asset by a person through transfer	50% on NR
	Cooperatives operating in village municipality	100% tax exemption

#	Industry	Tax rates and incentive
9.	**Other concessions though Finance Ordinance, 2078 (2021)**	
	Income derived from agriculture business by registered firm, company, partnership and organized institutions	50% rebate on AR/NR
	Income derived by startups as prescribed by IRD having annual turnover up to NPR 10 million based on innovative knowledge, skills, technology and methods	100% tax exemption for the first 5 years from the date of commencement of transaction
	Income earned from supplying raw materials and auxiliary raw materials manufactured in Nepal to special industries in Nepal	20% rebate on AR
	Industry engaged in manufacture of new products by using already used materials that have direct impact environment as its raw materials	50% rebate on AR for first 3 years from the date of commencement of transactions and 25% for next 2 years
	Establishment or relocation of special industries from area outside industrial area to industrial area	50% rebate on AR for first 3 years from the production date after the relocation and 25% rebate for next 5 years
	Income from export of goods manufactured by manufacturing industry with source in Nepal during any income year	Additional 35% rebate on AR
	Relocation of special industries from Kathmandu valley to locations outside valley.	100% exemption shall be provided for 3 years and 50% rebate for the next 2 years from the date of such relocation and operation

Other tax incentives

a) Traditional cottage industries are not subject to income tax and VAT.

b) Dividends received from resident companies are taxed at 5% to resident and non-resident persons, as final tax.

c) Expenditure incurred on R&D and the installation of pollution control equipment or processes is immediately deductible up to 50% of adjusted taxable income from taxable income. The balance is available for deduction through tax depreciation (if qualifying).

d) Persons are allowed deduction for donation to approved institutions (for instance, educational, religious and social organisations) up to a limit of 5% of their adjusted taxable income not exceeding NPR 100,000.

e) No income tax shall be levied on the income of certain cooperatives incorporated under the Cooperative ITA, 2048 conducting agricultural, forestry and other agriculture-based activities. Similarly, savings and credit cooperatives operating in rural municipality will be exempt from income taxes.

f) Dividends distributed by industry in SEZ will be exempt from tax for five years from the date of commercial transaction and will be taxed at 50% rebate for three years thereafter.

g) A resident natural person is entitled to medical tax credit of at least NPR 750 or 15% of medical expenses along with any credit carried forward from the previous year or actual tax liability.

Other incentives

a) Industries in SEZ will get full exemption from VAT while importing machinery, equipment, spare parts and raw materials and up to three vehicles. Apart from this, these industries can avail certain other benefits under VAT and ITA.

b) No excise duty shall be levied on goods to be produced by industries in SEZ.

c) Any duties or taxes levied on raw materials, auxiliary raw materials and so on used for producing goods for export/deemed export are entitled to a refund of such duties and taxes based on the quantity of export. The application for this must be submitted within a year of the date of export for duty refund.

d) Export-oriented industries may obtain the bonded warehouse facility. The raw materials for the products of such nature can be imported without paying any customs duty or sales tax by simply entering the details of such transactions in a passbook made available by the Department of Customs. The quantity of such raw materials used for manufacturing of exportable products is deducted from the quantity entered in the passbook upon export of the finished product. However, the industry must also submit a bank guarantee sufficient to cover the duties. The finished product must be exported within 10 months from the date of import of raw materials. The industry intending to avail of the facility must apply to the Department of Customs.

e) Sub-contracting within industries and accelerated rate of depreciation shall be available, along with such other facilities as may be specified by the GoN from time to time.

Import duties

Customs duty

Customs duty is calculated at the Nepal border on the import of goods and is based on the transaction value, which includes the cost, insurance and freight (CIF). Customs duty is revised each year by the Finance Act.

The valuation is determined by a valuation committee, which generally enhances the transaction value declared by the parties by 5% to 10% or as the case may be. In case there is under-invoicing, the customs official can revalue the goods based on the current market value and collect customs duty on such an amount.

Customs duty is levied on the basis of following methods.

- **Specific rate:** Duty is levied based on the size, weight or volume of the item imported. Such items, where a specific rate is applied, include cigarettes, liquor, noodles and tobacco.
- **Ad valorem duty:** Duty is levied based on the value of the goods. Items where an ad valorem duty is applied include paints and vehicles.

A customs service fee of NPR 500 applies per declaration (form) and is charged at the time the goods are imported into Nepal. (NPR 100 per declaration (form) is charged at the time goods are exported from Nepal).

Generally, customs duty ranges from 1% to 80% of the transaction value.

Excise duty

Excise duty is payable on the local manufacture of movable goods and on the import of excise attracting goods. Excise duty is governed and regulated by the Excise Act, 2002, and the Excise Regulation, 2003. As provisioned in the law, excise commodities are closely controlled and supervised by the GoN, from the production stage through to the selling stage.

License required: No one can manufacture, import, sell or store excisable goods or deliver a related service without obtaining a license. Similarly, the law prohibits the import of excisable services without a license. A person, firm or institution that requires such a license may submit an application in the prescribed form before an excise officer at the concerned IRD office.

Returns submission: Every registered person must file an excise duty return by the 25th day of the following month, even where transactions have not occurred.

Tax on insurance premiums

Tax shall be withheld at the rate of 1.5% on payment of premium to a non-resident insurance company and on payment of commission relating to reinsurance premium to a non-resident insurance company. Gains on investment insurance of resident natural persons is taxed and withheld at a flat rate of 5%.

Local taxes

Local taxes are those taxes that are governed by municipalities and rural municipalities. The central government has segregated the scope/area of collection of certain taxes by the municipalities and the rural municipalities. However, the collection of income taxes resides with the central government.

Each municipality and rural municipalities have their own finance act for each fiscal year, through which they set the percentage of local taxes, which includes business taxes, rental taxes, local business registration fees and so on, and the procedures for collection of the same.

Labour and Allied Laws

An outline of labour law

There are three major laws that advocate the rights and facilities that should be made available to the employees by the employer working in Nepal. A glimpse of the major Acts governing labour and employment regulations in Nepal are:

- Labour Act, 2017;
- Social Security Act, 2017; and
- Bonus Act, 1974.

In addition to these, the GoN publishes a minimum wage rate based on the economic conditions on a periodic basis.

Applicability of labour law

The GoN promoted the Labour Act, 2017 by repealing the existing Labour Law, 1992. The Labour Act is applicable to entities, which has been defined to include company, private firm, partnership firm, cooperatives, association or other organization ("entity") in operation, or established, incorporated, registered or formed under prevailing laws to undertake industry or business or provide service with or without profit motive.

It is also applicable to entities registered in foreign countries and engaged in the promotion of business, sale of products or promotion of other works in Nepal. In accordance with the new Labour Act, the representative or the labour hired by the foreign entity may file a complaint before the Labour Office or Labour Court if such entity violates the terms and conditions of the employment agreement.

The Act is not applicable to:

- civil service;
- Nepal Army, Nepal Police, Armed Police Force;
- entities incorporated under other prevailing laws or situated in SEZ to the extent separate provisions are provided; or
- working journalists, unless specifically provided in the contract.

The Labour Act does not specifically extend to the persons working with the foreign diplomatic missions. The foreign missions are exempt from local laws and jurisdiction, which of course may be extended to the employment matters in Nepal.

Recruitment

An entity can recruit a Nepali citizen as an employee and engage in the work by providing the employment letter specifying the terms and conditions specified in the labour law of Nepal. The recruitment process shall be generally governed by the internal policy of the organization, which should meet the minimum standard provisions of labour law in terms of the facilities and benefits, working hours, post-employment benefits, leave and other facilities.

The employees can be kept under a probation period of six months. Children cannot be engaged in work by any entities and no discrimination of the employees based on religion, caste, gender, language, origin, ethnic, colour or any other is permitted by the law. There is a provision of equal payment for equal work and for engaging women in work beyond office hours are permitted only if the facility for commuting from home to office and vice versa have been arranged.

No foreign national may be engaged in work without an employment agreement (in a language understandable by the foreign national or in English). A foreign skilled worker is hired only if a Nepalese citizen is not available for such a position.

A work permit is required and compulsory for all foreign nationals wishing to work, except for foreign nationals having diplomatic immunity or for those exempt from the requirement for a work permit under a treaty or agreement entered into with the GoN.

Following are the types of employment:

- **Regular:** Persons hired for work or service other than work based, time bound, casual or piece rate employment
- **Work-based:** Persons hired for rendering a specific service
- **Time bound:** Persons hired for rendering service for a definite time period
- **Casual:** Persons hired for seven days or less than seven days a month
- **Part-time:** Persons hired for 35 hours or less than 35 hours a week. Part-time workers shall be remunerated based on hours worked, unless otherwise specified in the employment contract. They cannot be prohibited from working elsewhere and shall be entitled to social security benefits
- **Intern:** Any person may be allowed to work as an intern pursuant to the approved syllabus of an educational institution, and after concluding an agreement with that educational institution
- **Trainee:** A trainee may be appointed for a period of training not exceeding one year, unless otherwise prescribed by law. All trainees shall be entitled to social security benefits including provident fund and gratuity

Working hours

Working hours continue to be eight hours a day and 48 hours a week. Overtime has been increased to 24 hours per week from 20 hours a week. Overtime pay is 1.5 times the regular remuneration.

30 minutes' break is provided after five hours of work, where the work can be interrupted. Where the work cannot be interrupted, a break is provided after shifts.

Facility of replacement (in-lieu-of) leave is available for workers working on public or weekly holidays.

Entities with foreign investment or entities operating on foreign aid

A work permit for foreign nationals hired as the chief executive may be provided by simply recording them at the Department of Labour.

Technicians engaged for less than three months to carry out repairing of any machinery or for installing new technology or similar casual work, may be provided with a work permit simply by recording them at the Department of Labour. Foreign nationals can repatriate their income in convertible foreign currency.

Remuneration and wages

Any employer shall pay at least the minimum remuneration prescribed by the GoN from time to time to its employees. Increments shall be made at least once a year at the rate of a half-day's salary, which is the minimum prescribed limit, and an amount equivalent to the monthly remuneration is provided once a year as festival expenses.

The Ministry of Labour, Employment and Social Security has prescribed separate minimum remuneration/wage for the workers/employees: The minimum remuneration to become effective from 1 Shrawan 2078 (16 July 2021) is tabulated below:

A. Minimum wages: other than tea estate

Minimum remuneration/wage	Basic remuneration	Dearness allowances	Total
Monthly	NPR 9,385	NPR 5,615	NPR 15,000
Daily	NPR 361	NPR 216	NPR 577
Hourly	NPR 48	NPR 29	NPR 77

In addition to the prescribed wages, the workers will have to be paid additional facilities including social security contributions as per the Social Security Act 2074, and provident fund and gratuity as required by the Labor Act, 2074.

B. Minimum wages: Tea estate

Minimum remuneration/wage	Basic remuneration	Dearness allowances	Total
Monthly	NPR 6,469	NPR 4,312	NPR 10,781
Daily	NPR 231	NPR 154	NPR 385
Hourly	NPR 31	NPR 20	NPR 51
*Daily allowance of NPR 42 to labourers, tea garden head and watchman working in the tea factory or tea refinery			

Timelines for payment of remuneration

Nature of work	Terms of payment
Engaged in work for less than a month	Within three days from completion of work
Engaged in casual employment	Upon the completion of work
Other employees	Payment periods should not exceed one month

Terminal benefits

The following terminal benefits are to be provided to the employees from the date of employment.

Particulars	Provisions
Provident fund	• Rate: 10% of basic remuneration • Eligibility: since the first day of employment • Deposited in: social security fund
Gratuity	• Rate of gratuity: 8.33% of basic remuneration • Time of allocation: every month (time of payment of remuneration) • Eligibility: since the first day of employment • Deposited in: social security fund
Leave encashment	Accumulation: • Home leave up to 90 days • Sick leave up to 45 days • Encashment at the time of discontinuation of service at the rate of last drawn salary

Leave and holidays

The employees are entitled to the following leave and holidays.

Particulars	Provisions
Weekly off	One day every week
Public holidays	13 days for male employees (Including International Labour Day) 14 days including International Women's Day for female employees
Home leave	One day for every 20 worked days
Sick leave	Fully paid up to 12 days in a year Eligibility: on a proportional basis for those employees who have not completed one year of service
Maternity leave	Up to 14 weeks (fully paid leave of 60 days)
Paternity leave	Up to 15 days, fully paid
Mourning leave	13 days
Leave in lieu	For labourers putting in work on public holiday or weekly off
Accumulation	Home leave: 90 days Sick leave: 45 days Excess accumulation: encashed every year

Other benefits

The employees are entitled to the following benefits as per the labour laws.

Particulars	Provisions
Festival expenses	Amount equivalent to the monthly remuneration once a year. The employee not completing one year service is entitled to the expenses on a proportional basis
Death compensation	The Act provides that the nearest successor is entitled to the amount of accident insurance
Medical insurance	Coverage: at least NPR 100,000 per year for every worker Premium: half by the employer and half by the employee
Accident insurance	Coverage: at least NPR 700,000 for every worker Premium: fully paid by the employer
Bonus	10% of net profit, by the profit-making companies having profit in any financial year
Disability compensation	As recovered from the insurance amount on the basis of degree of disability
Compensation against injury	As recovered from the insurance amount

Standard regulations for employment contracts

The Labour Act requires the employer to employ workers only after entering into an employment contract. The following should be mandatorily disclosed in the employment contract:

- nature of employment;
- job description and position;
- provision that the bylaws established under section 108 of the Labour Act to be indispensable part of
- the contract;
- place, time and effective date of implementation of the contract;
- other relevant employment terms.

Visas and work and residence permits

FITTA 2019 has made the following provision of visa facility to investors and their family members.

<table>
<tr><th>Visa type</th><th>Issued to</th><th>Duration</th></tr>
<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 six 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
<table>
<tr><th>Investment</th><th>Amount to be invested</th><th>Visa issued to Person</th></tr>
<tr><td>NPR 50 million</td><td>-</td><td>1 person</td></tr>
<tr><td>≥NPR 100 million</td><td>25% of the amount</td><td>1 person and family member</td></tr>
</table></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 of USD 1 million or above (previously USD 100,000) or in equivalent convertible foreign currency</td><td>Residential visa granted to two persons and family members till 50% of such investment is retained</td></tr>
<tr><td>Non-tourist visa</td><td>Foreign specialist, technician or managerial staff working in the industry</td><td>As per necessity</td></tr>
</table>

Investors can get visa-related services and work permits through a Single Point Service Centre.

Recommendation for a visa shall be issued through the Single Point Service Centre to the related office within two days of the application if the following is found in order:

- approval letter of foreign direct investment;
- copy of the applicant’s passport;
- 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 labour permit in case of non-tourist visa.

Social security

The GoN promoted a contribution-based Social Security Act, 2017, which became effective from 13 August 2017. The Act has been enacted to ensure the rights of the workers based on the concept of contributory social security and to cover all contributors.

Establishment of the social security fund

The social security fund (SSF) has been established for the operation and management of social security of the employees. SSF is established by contributions or money received from:

- contributors and employees (contributions);
- provident fund contributions from an employee and employer;
- gratuity, severance and so on under the Labour Act;
- social security tax collected to date (and to be collected in future);
- donations from the GoN;
- loans, assistance and donations from foreign governments and international;
- organizations (note: prior approval is required from the GoN before receiving such amounts);
- bonus from the national level 'Kalyankari'/welfare fund (note: utilisation is restricted to such a contributor only);
- the gain and interest received from an investment of the amount of SSF;
- loans from the GoN; and
- any other sources.

Contribution to SSF

Listed employers should deposit contributions as specified to the SSF on a monthly basis, unless otherwise specified or where a full month's contribution is not required, beginning from the day of listing of an employee till the last day of employment. Contributions shall be deposited in the SSF within 15 days from the end of the month. Broadly, there are four different kinds of schemes covered under the SSF:

- **Medical Treatment, Health and Maternity Protection Scheme;**
- **Accident and Disability Protection Scheme;**
- **Dependent Family Protection Scheme; and**
- **Old Age Protection Scheme.**

Schemes	Contribution (%) of basic salary		
	Employer	Employee	Total
Medical Treatment, Health and Maternity Protection Scheme (social security fees)	-	1	1
Accident and Disability Protection Scheme	1.40	-	1.40
Dependent Family Protection Scheme	0.27	-	0.27
Old Age Protection Scheme (gratuity 8.33% and provident fund 20%)	18.33	10	28.33
Total	**20**	**11**	**31**

The contribution-based social security scheme is funded through the contributions made by the workers and the employers. While the workers contribute 11% of their basic salary, the employers deposit 20% of the workers' basic salary.

Most importantly, the workers are eligible to participate in the social security scheme from day one of their employment, and there is no probation period of employment to be eligible to participate in the scheme. However, workers cannot claim for a particular benefit unless they have made mandatory contributions for a number of months into the fund. For example, to claim a medical benefit, a worker must have deposited his/her contribution regularly for at least six months.

A key feature of the SSF is the Old Age Protection Scheme, under which pension and retirement benefits are covered. This scheme has applied since 17 July 2019.

Upon retirement, the employee will be provided with a pension every month for life, which is equal to the amount derived after dividing the total amount of contributions made by the employer and the employee and the amount accrued from the investment made by the SSF, by 180 months.

To receive pension benefits, the contributor should be 60 years (or older) and should have contributed for at least 180 months or 15 years.

Delay in deposit of contribution

Interest at the rate of 10% in addition to the amount of contribution shall be charged by SSF for failure to deposit the contribution within 15 days from the month end. The enlisted employer can within 30 days, after the due date for depositing the contribution, file an application in writing, specifying reasons and the basis of occurrence of uncontrollable event, for the delay. If the explanation is considered reasonable, the SSF shall provide a full or partial waiver in the interest amount and permit deposit with or without interest.

Failure to deposit the contribution

Where contributions are not deposited, the SSF will notify the related institution of the following actions to be complied within 15 days of the notification:

- freeze bank accounts of such employers;
- freeze movable and immovable properties of such employers;
- abrogate all the facilities received by law;
- cancel the license of such employers; and
- freeze the passport of concerned personnel.

Contribution by employer on behalf of employees

An enlisted employer shall contribute in the SSF on behalf of employee, for a maximum period of three months, in case, where for any reason, the related employee is not entitled to salary and fails to deposit his/her contribution to the fund in regular basis.

Entitlement in social security program

A contributor to the SSF is entitled in the social security program as prescribed, in proportionate basis its contribution, for period as specified.

Employee bonus

The Bonus Act, 1974 provides a legal basis for the payment of bonus from the profits earned by an entity to its workers and employees.

Amount of bonus to employees

Each profit-making enterprise (other than a government-owned enterprise) must allocate an amount equivalent to 10% of its annual net profit to be paid as bonus to its employees. The bonus to be received by an employee should not exceed the following amounts.

Remuneration	Maximum bonus payable
Monthly salary or wage up to two times of the minimum wage fixed by the GoN	Amount up to eight months of salary or wage
Monthly salary or wage more than two times of the minimum wage fixed by the GoN	Amount up to six months of salary or wage

Payment

An employee bonus is required to be paid (in cash) every year within a period of eight months from the end of the fiscal year or in certain cases, it can be paid the following year as an accumulated bonus for both years.

A bonus is not paid for a period of absence from work (unless the period is an exempted one) or for a period of staging an illegal strike.

Staff welfare fund

From the balance remaining after the distribution of a bonus to the staff:

- 70% must be deposited into the welfare fund (established in accordance with the prevailing laws); and
- 30% must be deposited with the national level welfare fund.

Prevention of occupational hazards

The Labour Act has envisioned about occupational safety and health. This requires employers to impose effective controls to protect employees from occupational hazards, which helps to avoid injuries, minimize or eliminate health risk, and helps employers provide workers with safe and healthful working conditions. For the purpose of occupational safety and health of the employees, the employer is required to:

- formulate a safety and health policy;
- form a safety and health committee;
- ensure a safe environment by making appropriate safety and health provisions at the workplace;
- make necessary provision for the use, operation, storing or shifting of chemical, physical or bio-degradable material or equipment so that the safety and health of the workers are not affected adversely;
- provide necessary information, notice or training relating to the safety and health of the workers;
- provide necessary training and information in an appropriate language to the workers in relation to the equipment and use or operation of chemical, physical or biodegradable material for the work;
- make proper arrangement for the safe entry and exit from the workplace;
- provide necessary personal safety equipment to the workers; and
- the employer shall not take any fees from workers for providing necessary safety equipment or facilities to the workers.

E-business Legal Framework

Civil and commercial regulations

The general civil and commercial regulations that an e-commerce business should follow are enlisted below:

- Companies Act, 2006;
- Income Tax Act, 2002;
- Industrial Enterprises Act, 2020;
- Foreign Investment and Technology Transfer Act, 2019;
- Money Laundering and Prevention Act, 2008, etc.

E-commerce companies shall not be involved in manufacturing or production of products. However, prior approval from the Department of Industry and Commerce is required if the company is planning to get involved in manufacturing of goods or products. An e-commerce company can be registered with the Department of Commerce or the Department of Industry if the following conditions are met:

An e-commerce can be registered with the Department of Commerce if…	An e-commerce can be registered with the Department of Industry if…
… the nature of business is trading	… the company sells goods, customizes them and is involved in packaging
… the company operates its business by promoting trade through its e-commerce platform	… it is written in the Memorandum of Association
… the company imports and exports goods and direct sales	… the company is involved in import and export

The Information Society Services and E-Commerce Act (LSSI)

At present, there are no specific laws governing e-commerce in Nepal. However, due to an increase in e-commerce service providers, the GoN is in the process of formulating relevant laws to regulate the e-commerce and online shopping business. The draft of the law has been prepared and will be presented to parliament for enactment after approval is obtained from the council of ministers.

The bill has been brought to manage and regulate the sale of goods and services and intellectual property using electronic means. The preamble of the bill mentions to make the process of purchase and sale of goods, services and intellectual property easy, fast, economical, reliable, quality, timely and reliable for the convenience and benefit of the consumers by making proper use of modern technology in the trade done through the use of electronic media.

Similarly, it is necessary to organize and regulate the trade done through electronic means by arranging compensation for the loss and damage to consumers. The ministry has already released a report with an action plan and an e-commerce strategy. The law would address company and business registration, renewal, platform, security and data security.

Appendix

Reference web sites

Labour Act, Social Security Act, Copyright Act, Trademark and Patent Act	www.lawcommission.gov.np
Labour Updates	www.ilo.org
Social Security Fund Updates	www.ssf.gov.np
Environment Protection Act, 2076 (2019)	www.pioneerlaw.com
Foreign Exchange (Regulation) Act, 1962 (2019)	www.investnepal.gov.np
The Information Society Services and E-Commerce Act	www.isipp.com
• The Companies Act, 2006 • Income Tax Act, 2002 • Industrial Enterprises Act, 2020, • Foreign Investment and Technology Transfer Act, 2019, • Money Laundering and Prevention Act, 2008, etc.	www.lawcommission.gov.np
Consumer Protection Act, 2018	www.lawcommission.gov.np
Society Registration Act and Social Welfare Act	www.lawcommission.gov.np
Nepal Petroleum Act, 2040	www.lawcommission.gov.np
Value Added Tax Act, 1996 and Regulation, 1997	www.lawcommission.gov.np
Excise Act 2002	www.lawcommission.gov.np
• Labour Act, 2017, • Social Security Act, 2017 • Bonus Act, 1974. • Finance Act	www.lawcommission.gov.np

Authors

Tirtha Raj Upadhyay
Senior Partner
tirtha.upadhyay@pkf.com.np

Shashi Satyal
Managing Partner
shashi.satyal@pkf.com.np

Sanjeev Kumar Mishra
Partner
sanjeev.mishra@pkf.com.np

Sumitra Rijal
Partner
sumitra.rijal@pkf.com.np

Santosh Lamichhane
Director
santosh.lamichhane@pkf.com.np

right people
right size
right solutions

PKF International Ltd.
Studio 215-216, Great Western Studios, 65 Alfred Road, London, W2 5EU, United Kingdom
Telephone: +44 20 3691 2500

www.pkf.com

PKF International Limited administers a 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.

DBINEP062021