

# Investing in Nepal

## A Handbook for Indian Investors

2018/19

Prepared by Nepal-India Chamber of Commerce and Industry  
in association with Embassy of India, Nepal



NICCI



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

We cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this guide.

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NICCI would also like to acknowledge various publications and government, public and private institutions, upon whose published information it relied on, for publication of this handbook. Their outstanding primary and secondary research data is duly acknowledged in the credits.

## PATRON'S MESSAGE

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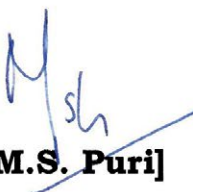
December 13, 2018

**Message**

I am glad to note that the Embassy of India and the Nepal-India Chamber of Commerce and Industry (NICCI) are bringing out this handbook for Indian investors for investments in Nepal.

This concise handbook would serve as a ready reckoner for prospective and current investors from India to Nepal and would provide clarity on the extant legal provisions in area such as Foreign Direct Investment regulations on various sectors of economy, procedure of registration of various types of company entities in Nepal across sectors, flow charts on steps to be taken to register those entities as well as sectoral attractiveness in Nepali economy.

I have no doubt that this handbook will be useful in assisting all Indian investors take the appropriate decisions while pursuing business opportunities in Nepal.

  
[M.S. Puri]



## MESSAGE BY CEO, INVESTMENT BOARD NEPAL



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## MESSAGE

Nepal and India share a multi-faceted relationship, founded on centuries of historical, social and cultural dimensions. The mutual respect and commitment, bestowed by political leadership of both the countries upon the historic relationship has further increased the opportunities for mutual benefits. The recent efforts to boost mutual cooperation in vital sectors such as energy, transport, trade and transit among others, are some significant evidences toward such benefits.

For nearly a quarter- century, Nepal-India Chamber of Commerce and Industry (NICCI) has been playing a crucial role in facilitating bilateral economic, trade and investment relations between the two countries. NICCI's initiative to bring a new publication "Investing in Nepal: A Handbook for Indian Investors" is yet another key step to increase investment opportunities between the two neighbors. I, on my personal capacity, as well as on behalf of Investment Board Nepal (IBN), would like to congratulate NICCI on such a fine publication, which is extremely rich with all information for investors. I am hopeful that the guidebook will prove to be instrumental in inspiring more investors from India to set up business in Nepal.

As rightly noted in the "Handbook", Nepal is an attractive destination for investment. Stable politics, improved legal regime, uninterrupted supply of energy, plethora of natural resources, cheap labor and low tax regime are some of the attractions for doing business in Nepal. Investors from India, particularly, enjoy more advantages in Nepal. For instance, currency peg mitigates currency risk, geographical proximity significantly reduces the time and cost of setting up business in Nepal, bilateral agreements, among others provide special leverages to investors from India in Nepal. IBN, being a key government agency, to create investment-friendly environment and bring in private investments, expects more investments particularly from neighboring countries like India. I am hopeful that the Handbook will be useful toward this endeavor.

(Maha Prasad Adhikari)  
Chief Executive Officer

## FOREWORD

“Isn’t there a simple reference book where we can find information on doing business in Nepal?” This is the foremost and perennial question asked by Indian business houses and entrepreneurs to Nepal-India Chamber of Commerce and Industry (NICCI).

Now there is. In collaboration with the Embassy of India in Nepal, we have brought out a concise, compact handbook which covers most of the questions asked of us. The approach and layout are primarily in the form of questions and answers, which would not only aid larger investors but also smaller and entrepreneurial businesses. Our objective is to provide preliminary data, which can be further researched from acts and rules and sources mentioned in the handbook. In depth queries on specific sectors have been purposely omitted to reduce the size of the handbook.

NICCI has proactively been in the forefront in enhancing bilateral trade and investment and continues to focus on fostering and facilitating economic activities through the promotion of bilateral trade, investment and industry between India and Nepal, and, in view of the myriad of exciting Foreign Investment possibilities further opening up in Nepal, we hope the resultant handbook for Indian Investors will assist them in their decision making.

Indian investors in Nepal have played a significant role in the economic development of Nepal by bringing in new technologies and management skills; they have also made notable contributions in terms of revenues to the exchequer, import substitution, promotion of Nepal’s exports to India and employment of tens of thousands of Nepali citizens. However, Foreign Investment from India to Nepal is fraction of India’s total Investment abroad and there is huge untapped potential; we believe that this handbook will help large and small businesses in exploring the vast potential and opportunities Nepal has to offer.

We look forward to welcoming more Indian investment in Nepal and aspire for their success and growth.

Saurya SJB Rana

President

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## ABBREVIATION

| S.No. | Abbreviation                  |  |
|-------|-------------------------------|--|
| 1     | AOA                           | Articles of Association                                      |
| 2     | Arbitration Act               | Arbitration Act 1998   |
| 3     | BAFIA                         | Banking and Financial Institution Act 2016                   |
| 4     | BIPPA                         | Bilateral Investment Promotion and Protection Agreement 2011 |
| 5     | Bonus Act                     | Bonus Act 1974   |
| 6     | Civil Code                    | Country Civil Code 2017                                      |
| 7     | Companies Act                 | Companies Act 2006   |
| 8     | Customs Act                   | Customs Act 2007   |
| 9     | Customs Rule                  | Customs Rules 2007   |
| 10    | DOI                           | Department of Industries                                     |
| 11    | DOL                           | Department of Labour   |
| 12    | DTAA                          | Double Taxation Avoidance Agreement                          |
| 13    | EIA                           | Environment Impact Assessment                                |
| 14    | Excise Duty Act               | Excise Duty Act 2002   |
| 15    | Excise Duty Rules             | Excise Duty Rules 2002                                       |
| 16    | EXIM                          | Export Import Code   |
| 17    | Export and Import Control Act | Export and Import Control Act 1957                           |
| 18    | FDI                           | Foreign Direct Investment                                    |
| 19    | FITTA                         | Foreign Investment and Technology Transfer Act 1992          |
| 20    | FERA                          | Foreign Exchange (Regulation) Act 1962                       |
| 21    | GON                           | Government of Nepal  |
| 22    | IEE                           | Initial Environment Examination                              |
| 23    | IIPB                          | Industry and Investment Promotion Board                      |
| 24    | IEA 2016                      | Industrial Enterprises Act 2016                              |
| 25    | IBN                           | Investment Board of Nepal                                    |
| 26    | IBA                           | Investment Board Act 2011                                    |
| 27    | IRD                           | Inland Revenue Department                                    |



| S.No. | Abbreviation        |   |
|-------|---------------------|---|
| 28    | ITA                 | Income Tax Act 2002   |
| 29    | ITR                 | Income Tax Rules 2003   |
| 30    | Labour Act          | Labour Act 2017   |
| 31    | Labour Rule         | Labour Rules 2018   |
| 32    | LRO                 | Land Revenue Office   |
| 33    | MOA                 | Memorandum of Association   |
| 34    | MULA                | Mutual Legal Assistance Act 2014  |
| 35    | NEPSE               | Nepal Stock Exchange  |
| 36    | New York Convention | New York Convention on the Recognition and Enforcement of Foreign Arbitral Award 1957 |
| 37    | NPR                 | Nepalese Rupee  |
| 38    | NRB                 | Nepal Rastra Bank   |
| 39    | OTC                 | Over the Counter  |
| 40    | OCR                 | Office of the Company Registrar   |
| 41    | PAN                 | Permanent Account Number  |
| 42    | PDTA                | Patent Design and Trademark Act 1965  |
| 43    | Social Security Act | Social Security Act 2018  |
| 44    | SEZ                 | Special Economic Zone   |
| 45    | SSS                 | Social Security Schemes   |
| 46    | SSF                 | Social Security Fund  |
| 47    | TDS                 | Tax Deducted at Source  |
| 48    | Trade Union Act     | Trade Union Act 1992  |
| 49    | UNCITRAL            | United Nations Commission on International Trade Law                                  |
| 50    | USD                 | United States Dollar  |
| 51    | VAT                 | Value Added Tax   |
| 52    | VAT Act             | Value Added Tax Act 1995  |
| 53    | VAT Rules           | Value Added Tax Rules 1996  |

## NEPAL'S POTENTIAL AND ATTRACTIVENESS AS AN INVESTMENT DESTINATION

Foreign Direct Investment (FDI) plays a catalytic role in economic growth. It is a source of capital formation. Likewise, it helps technology to spillover, supports human capital formation, enhances international trade integration, creates a competitive environment and strengthens enterprise development.

Nepal has been pursuing a liberal foreign investment policy and striving to create an investment-friendly environment to attract FDI. The importance of the private sector is recognised by the Constitution of Nepal (2015). Foreign investors are allowed 100% ownership of a company in almost all sectors and repatriation of capital and profits.

In order to attract foreign and domestic investment to boost the economy, the Government of Nepal has constituted the high level Investment Board of Nepal (IBN), chaired by the Prime Minister. The main objective of this board is to facilitate investors in investing in the large scale potential sectors in Nepal by providing one window facilities.

The largest contributor to Nepal's FDI is India. Indian Companies have made a significant contribution to the Nepalese economy both in terms of employment generation as well as contribution to the National exchequer. The proximity of the Indian market, backed by the Trade treaty offering preferential access free of basic custom duty for Nepalese manufactured goods, coupled with bilateral investment protection and double tax avoidance arrangements with India makes Indian investments in Nepal very attractive.

In addition, zero-tariff on products from Least Developed Countries (LDC) like duty free, quota free market access to European Union under Everything But Arms (EBA) arrangements and duty free US market access to 66 types of garment items upto 2026 provides trade free access to Nepalese products in developing and developed countries which makes Nepal attractive as a destination for foreign investment.

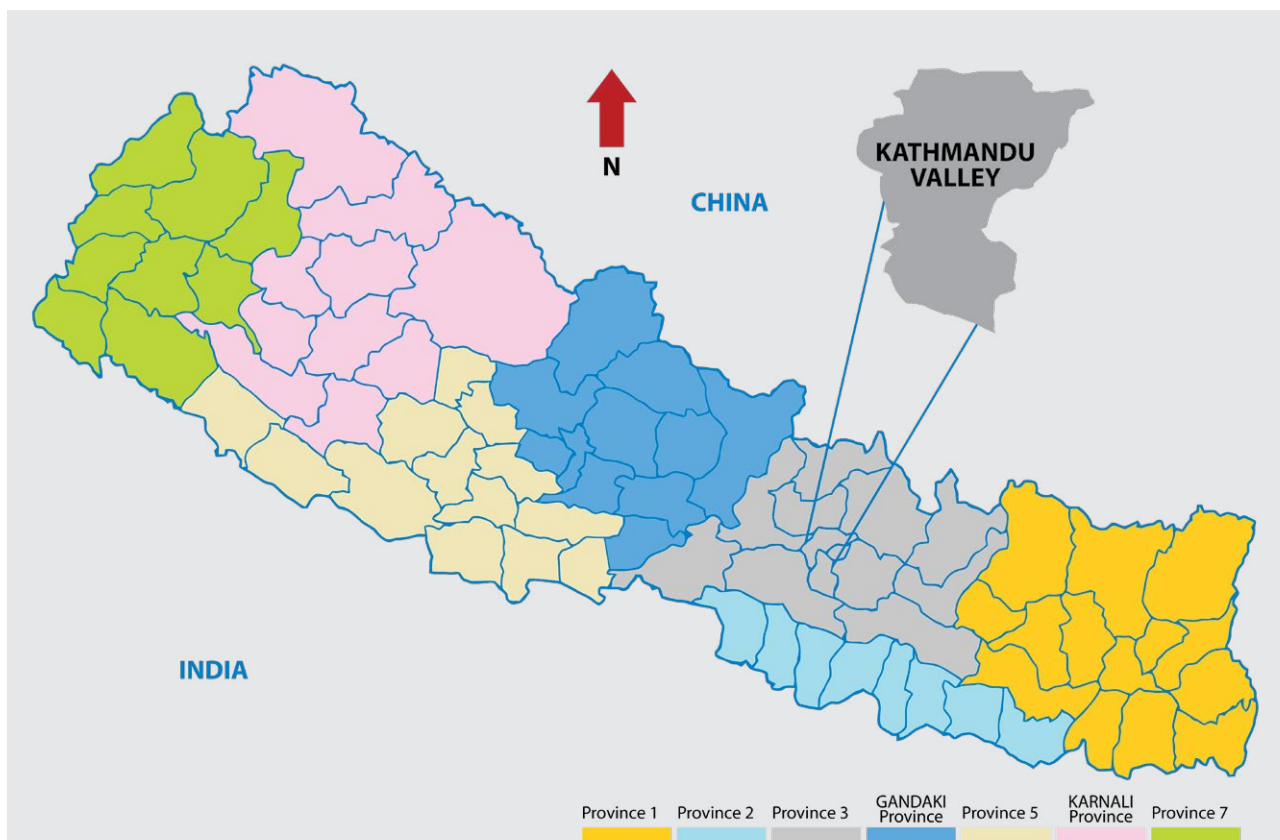
Market competition is low and there are low levels of FDI inflows into Nepal. As per United Nations Conference on Trade and Development (UNCTAD), when it comes to profits, the evidence is that rates of return on foreign direct investment in LDC are much higher than on investment in developed, or even other developing, countries. While investing in an LDC can be complex, an LDC is not always riskier than other locations and frequently more profitable.

Some of profitable areas of investment in Nepal are:

- The topography and abundant water resources give rise to vast untapped hydropower potential. Nepal's potential for economically feasible hydropower is estimated at 44000 MW and there is already significant FDI in hydropower from Indian investors. There is major potential for exporting hydroelectric power to India and neighbouring countries.
- 8 of the world's 10 highest peaks, combined with unique cultural heritage, offers enormous potential for tourism. Nepal offers tourists varied services from adventure tourism to eco-tourism and religious tourism. The government has implemented a liberal tourism development policy aimed at attracting a larger flow of tourists with an objective of bringing 2 million tourists in Visit Nepal Year 2020.
- Incredibly rich biodiversity offers substantial opportunities to investors in agriculture and medicinal and aromatic plant research. Herbs and herbal products are showing great promise largely because of the ideal growing conditions in the hills and mountain regions. Nepal has hundreds of plants with medicinal and aromatic properties but Nepal trades most of its medicinal and aromatic plants in crude form because of limited cultivation and processing facilities in Nepal.

# COUNTRY PROFILE

## Geography of Nepal



Nepal, officially known as the Federal Democratic Republic of Nepal, is situated between India and China. A vast area of the country is located amidst the Himalayas, but the geographical terrain also includes parts of the Indo-Gangetic plains. Nepal, which was in transition, has finally entered into a federal system of government following the successful election of three tiers of government at the local, provincial and federal level.

Nepal has been divided into seven provinces. The seven provinces were formed by grouping the existing districts. The current system of seven provinces replaced an earlier system where Nepal was divided into 14 administrative zones which were grouped into five development regions.

### Statistics of Nepal

|  |   |
|--|---|
| Government                                     | Federal Parliamentary Republic  |
| Capital  | Kathmandu   |
| Area   | 147,181 km <sup>2</sup>   |
| Population                                     | 29.10 Million   |
| Per Capital GDP (United States Dollar (“USD”)) | 1003.64   |
| Official language                              | Nepali at the national level<br>Nepali along with Maithili and Bhojpuri in Province 2<br>Nepali/English for legal documents |
| Currency                                       | Nepalese Rupee (“NPR”)<br>1 Indian Rupee (INR) = 1.60 NPR (Pegged)  |

Source: Economic Survey 2018, Ministry of Finance; National Accounts 2018, Central Bureau of Statistics; and Current Macroeconomic Situation 2017/18, Nepal Rastra Bank

## Political and Legal System in Nepal

Nepal has a written constitution, the “Constitution of Nepal” which was promulgated by the Constituent Assembly in 2015. State power has been allocated amongst three organs: parliament, executive and judiciary with a provision of checks and balances.

The Constitution of Nepal (2015) is the fundamental law of Nepal. All laws that may be enacted by the Parliament or any other Government agencies (in the form of directives, circulars etc.) must be consistent with the Constitution, as otherwise they can be rendered invalid by the Supreme Court.

The President is the head of State and the Prime Minister is head of the government. Nepal has a federal and state parliamentary system. The federal legislature is bicameral with two houses, House of Representatives and National Assembly and on the state level, a state assembly. Executive power of the state rests with the Council of Ministers.

The legal system of Nepal is based on common law with a strong influence of Hindu customary law. The legal instruments includes Acts enacted by Parliament, rules framed by the Council of Ministers or other competent law-making bodies and circulars/directives issued by Government agencies

under the delegated legislation. The Government can also issue various policies. These policies are not legally enforceable, nor do they create a right or any obligation; generally the policies help in understanding the approach of the government and are the proposed strategy for the future. Further, Policy cannot override provisions stated in the Act.

The Constitution provides for independence of the Judiciary. There are 3 tiers of courts in Nepal namely District Court, High Court and Supreme Court. The Supreme Court is the court of record and has power of judicial review.

The right to property has been protected by the Constitution as a fundamental right, and property within the territory of Nepal has been guaranteed against nationalization. The Government may not nationalize any industry - the only exception to nationalization being that the Government may acquire private land if it is required for public purposes, by providing compensation to the owners. The exception to non-nationalization is in case of public interest, requisition or acquisition, or if it creates encumbrance on the property of another person.

## Economic System

Nepal has a mixed economic system with aspects of both capitalism and socialism. The country has a Privatization Act, 1993 and has adopted and consistently pursued a liberalization policy since 1990 with the aim of engaging the private sector in

new areas of trade and business. The preliminary estimate of economic growth for FY 2017/18 is 5.9 percent as per the Economic Survey of 2017/18 carried out by the Ministry of Finance. It was 7.4 percent in FY 2016/17.

## Foreign Direct Investment (“FDI”)

The government has introduced policies to welcome and protect foreign investment in Nepal. The country has enacted the Foreign Investment Policy, 2014 to safeguard the rights of investors and defines the facilities that have been provided. Nepal currently has an open liberalized market that allows for foreign investment in a wide range of sectors. Nepal is also a member of the World Trade Organization and

member countries can exercise the concessions facilitated.

The geographical location of Nepal allows for a budding area for investment - the country is situated between India and China and has evolved as a hub for development in recent years. The country also has statutory protection for investments in place

entailing that all investment is protected. Investors also exercise rights against nationalization of their investment and property. They also have a right to cent percent repatriation of their investment profits, making Nepal an arable platform for investment.

Nepal has opened a plethora of industries towards the prospects of foreign investment, making it vibrant and attractive for foreign investment. Most industrial sectors in Nepal are open for foreign investment up to cent percent, but some sectors have a capped limitation of foreign investment holdings.

Foreign investment in Nepal is open in multiple sectors and size of industries - investments in both small scale and large scale industries have been

welcomed in the county. Given Nepal’s geographical prowess, sectors such as energy and tourism have seen a maximization of potential investment in a competitive environment. The government has also aided this by making foreign investment a priority sector.

Up to 2017/18, Nepal has foreign investment from 92 countries. In terms of the proposed project cost recorded at Department of Industries, India has the highest FDI in Nepal, with total proposed amount of foreign investment by Indian Investors being NPR 87,912.01 million, as of mid-July, 2018. Indian investors investing in Nepal also do not require visas like nationals of other countries.

### Industries Approved for FDI by Category (Up To F/Y 2017- 2018)

NPR in Millions

| Category                | No.of Projects | Total Capital  | Fixed Capital  | Working Capital | Foreign Investment | No. of Employment |
|-------------------------|----------------|----------------|----------------|-----------------|--------------------|-------------------|
| Agro and Forestry Based | 267            | 7,906          | 6,584          | 1,322           | 6,209              | 9,749             |
| Construction            | 46             | 3,842          | 2,866          | 972             | 2983               | 3,226             |
| Energy Based            | 82             | 191,487        | 187,764        | 5,624           | 123,833            | 11,612            |
| Information Technology  | 35             | 679            | 383            | 295             | 632                | 1,156             |
| Manufacturing           | 1,106          | 104,966        | 83,353         | 20,751          | 48,339             | 98,567            |
| Mineral                 | 70             | 10,348         | 8,222          | 2,126           | 7,968              | 8,650             |
| Service                 | 1501           | 70,831         | 44,973         | 25,712          | 47,874             | 62,069            |
| Tourism                 | 1370           | 47,146         | 42,960         | 3,917           | 30,840             | 48,502            |
| <b>Total</b>            | <b>4,477</b>   | <b>437,205</b> | <b>377,105</b> | <b>60,719</b>   | <b>268,677</b>     | <b>243,540</b>    |

Source: Industrial Statistics, Department of Industry, 2017/2018



## CHAPTER I

## DOING BUSINESS IN NEPAL: General Overview

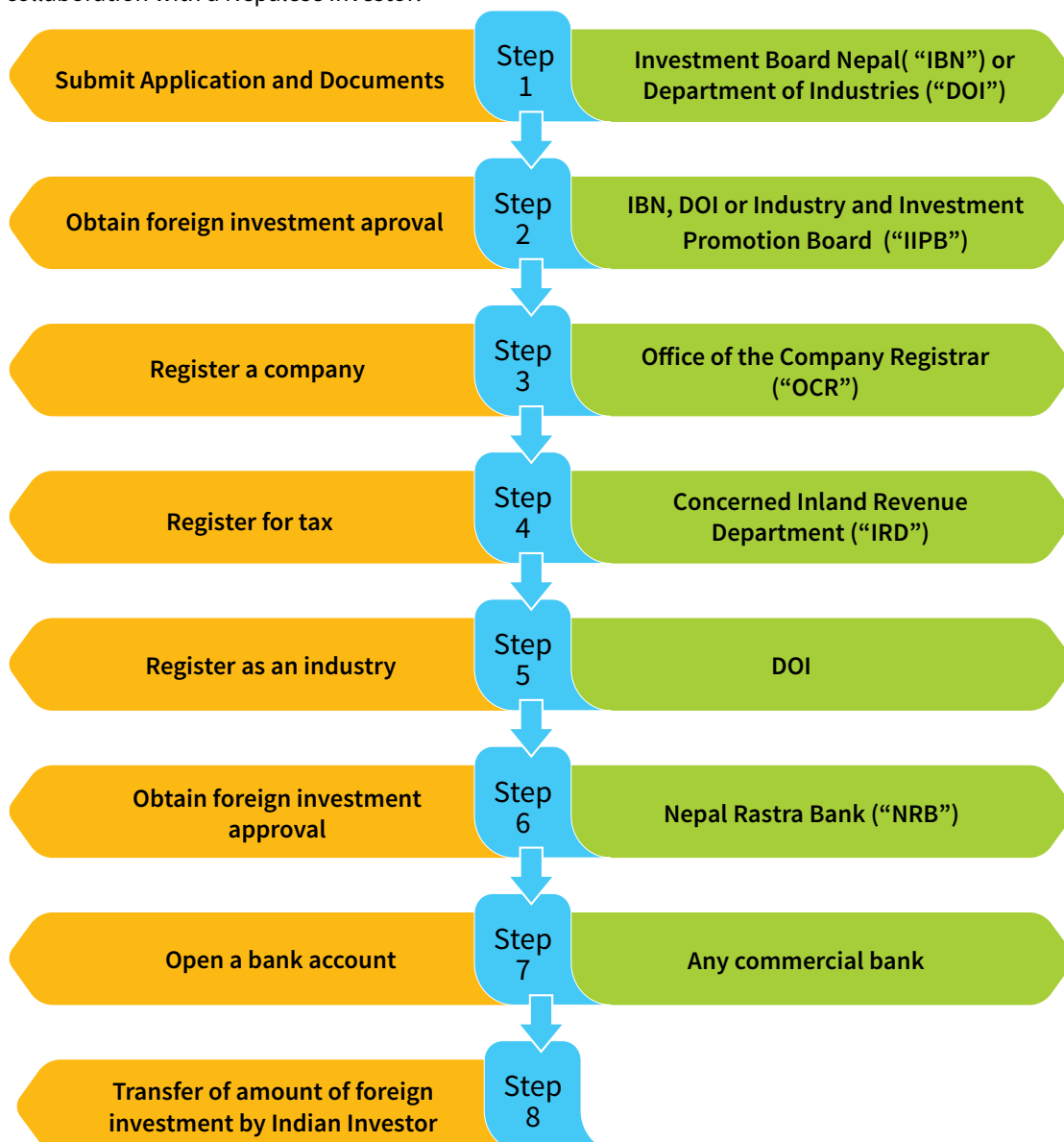
Indian investors can invest and carry out business activities in Nepal by adopting any of the following commercial presence:

**(a) Limited liability companies:**

An Indian investor can invest or operate a business in Nepal (i) by incorporating a limited liability company in Nepal, (ii) by acquiring shares of a limited liability company already in existence. Indian investors can incorporate a private limited company or a public limited company. Private limited companies can also be incorporated with a single shareholder. At least seven shareholders are required to incorporate public limited companies. There is no provision for registration of limited liability partnerships.

**(i) By incorporating a limited liability company:**

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



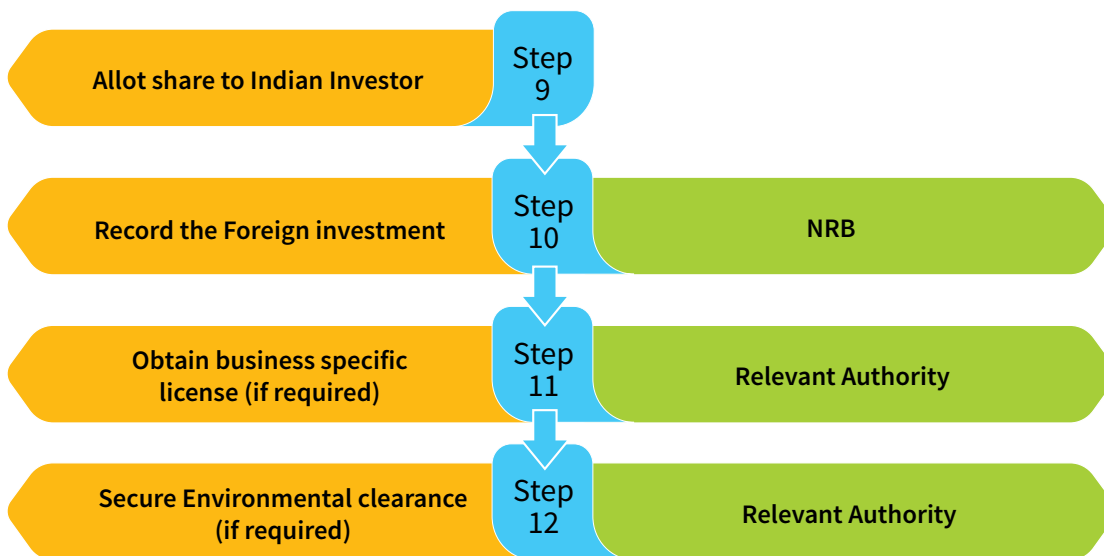


Figure: Investment in a New Company (Public and Private)

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

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

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

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

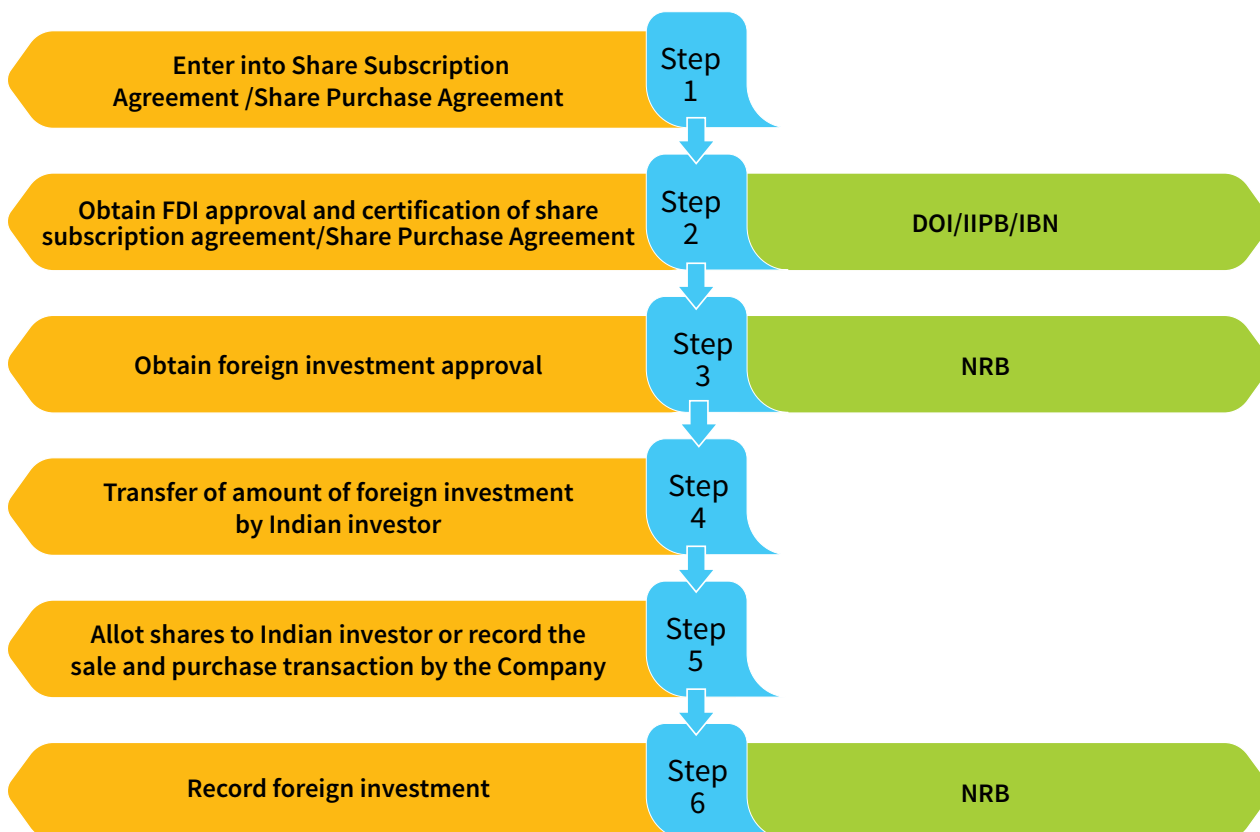


Figure: Investment in an Existing Company

**(b) Branch Office:**

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

The Companies Act 2006 (“Companies Act”) of Nepal requires registration of a branch office if a foreign company is undertaking business activity in Nepal for a continuous period of one month or more from any office or any place used for that purpose. The mandatory requirement of branch registration is not applicable for Indian companies in cases where-(a) the Indian investor is making investment in share capital, or (b) providing debt to an entity in Nepal, or (c) participating in management of such entities (for example in the form of management services). These activities are not considered as “carrying out business activity” in Nepal. However, these activities require approval under the foreign investment laws of Nepal.

The registration of a branch requires the prior approval of government authority. In the context

where an Indian company has entered into an agreement with any government authority, such agreement itself constitutes approval for registration of a branch.

The Foreign Investment and Technology Transfer Act 1992 defines foreign investment in the form of investment in shares and loan or loan facilities (amongst others) and not specifically the registration of a branch. In view of this, the Department of Industry is currently not providing approval for registration of branch on the basis that they have no jurisdiction. Therefore, at present, Indian investors have the option to operate in Nepal on the basis of branch registration only in a situation where they have entered into an agreement with any government authority in Nepal or if there is any specific government authority for providing specific approval for branch registration. This generally may be for the supply of goods or services or selection for project implementation in Nepal on the basis of public bidding. The registered branch can undertake all such activities that are covered under such agreement entered into with the government authority on the basis of which the branch is registered.

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

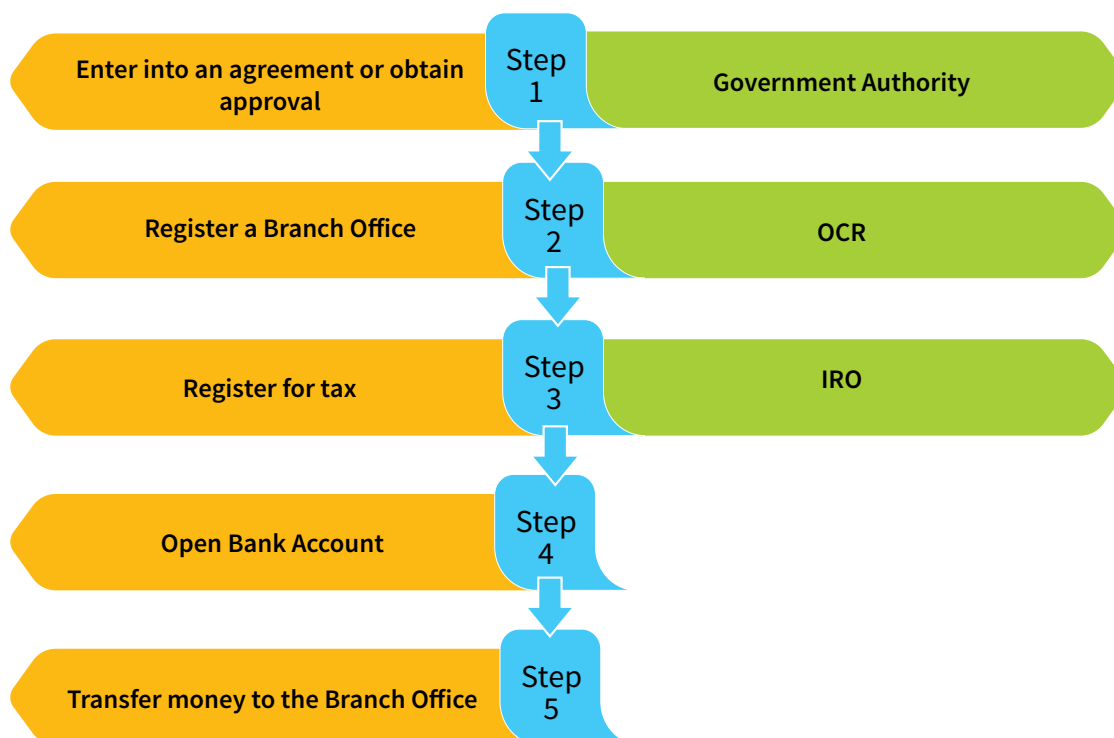


Figure: Establishing a branch office

**(c) Contact (Liaison) Office:**

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

**(d) Other options:****(i) Tax Registration:**

There are also practices where business activities are operated on the basis of tax registration with the relevant tax office without registering a legal company or branch office. While this approach fulfills the compliance requirement under the tax laws, it will not comply with the requirement under the Foreign Investment and Technology Transfer Act 1992 or Companies Act. Further, this approach will also hinder the ability to repatriate profits earned in Nepal as the NRB, requires documents related to registration of a local company or branch office in Nepal.

**(ii) Business in Individual Capacity:**

There are also instances where business activities have been undertaken in individual capacity on the basis of tax office or business registration with municipalities. This approach is generally adopted in trading business and also does not fulfill the legal requirement under the laws of Nepal. Further, trading business is not open for foreign investment and therefore trading activities may also not be undertaken on individual basis by Indian investors.

## CHAPTER 2

## INVESTING IN NEPAL

## Regulation of Foreign Investment

## 1. What laws regulate foreign investment in Nepal?

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

- a. Foreign Investment and Technology Transfer Act 1992 (“FITTA”)
- b. Investment Board Act 2011 (“IBA”).
- c. Industrial Enterprises Act 2016 (“IEA”).
- d. Foreign Exchange (Regulation) Act 1962 (“FERA”).

Department of Industries (“DOI”), Industry and Investment Promotion Board (“IIPB”), Investment Board of Nepal (“IBN”) and Nepal Rastra Bank (“NRB”) are the main regulatory bodies with regard to foreign investment.

## 2. What is foreign investment?

- a. The following investments made by a foreign investor in an industry are considered as “foreign investment”:
  - Investment in shares,
  - Reinvestment of the earning derived from shares, or
  - Loan or loan facilities.
- b. There is no restriction on who can invest in Nepal. It can be individuals, corporate entities or firms. However, in certain sectors like financial institutions, investment can be made only by foreign financial institutions.

## Share Investment

## 3. What sectors are open for Indian investors?

- a) Nepalese law permits foreign investment in a wide range of activities and most of these sectors of business are open for investment. However, foreign investment is allowed only in industrial activities and not in trading activities. Nevertheless, IEA permits manufacturing companies to carry out the import activity within prescribed terms and conditions to examine the viability of the product in the Nepalese market.
- b) Foreign investment is permissible in sectors which are (a) classified as industry, and (b) sectors which are not included in negative list (the “**Negative List**”).

## i) Industry Classification

Section 3 of the IEA classifies industry into eight categories and lists the nature of activities in each of these categories: (1) Energy Industry, (2) Manufacturing industry, (3) Agriculture and Forestry Industry, (4) Minerals Industry, (5) Construction Industry, (6) Tourism Industry, (7) Industry based on Information, Broadcasting and Communication, and (8) Service Industry.

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

## ii) Negative List

The negative list provided in the FITTA is included in Schedule A and Schedule B;

- (a) “Schedule A”, which can only be amended by the Parliament by passing a law, and
- (b) “Schedule B”, which can be amended by the GON by publishing a notice in the Nepal Gazette.



| Schedule A   | Schedule B   |
|--|--|
| Cottage Industries   | Retail Business (However, foreign investment in retail business is permitted if-(a) such retail business has been operating as an international chain, (b) in at least three foreign countries. (There is no distinction between wholesale and retail business)) |
| Personal Service Business (business such as Hair Cutting, Make-up, Tailoring, Driving training etc.) | Bidi (investment in bidi manufacturing is permitted if more than 90 % of the production is exported)   |
| Arms and Ammunition Industries   | Internal Courier Service   |
| Explosives, Gunpowder  | Atomic Energy  |
| Industries related to Radio-Active Materials   | Poultry  |
| Real Estate Business (however, foreign investment is permitted in construction industries)           | Fisheries  |
| Motion Pictures Business (in National Languages)   | Bee Keeping  |
| Security Printing  | Consultancy Services such as Management, Accounting, Engineering and Legal Services of more than Fifty One percent (51%). However, foreign investment in consultancy business is permitted if foreign ownership is limited to 51 per cent.                       |
| Currencies and Coinage Business or Bank Notes and Coins  | Beauty Parlour   |
|  | Food and grain milling activities  |
|  | Local Catering Services  |
|  | Rural tourism  |

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

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

- a. Nepal has a dual approval system. The following government approvals are required:
- (i) Approval from the DOI/ IIPB/IBN (the “Foreign Investment Approval”), and
  - (ii) Approval from NRB (the “NRB Approval”).

The approving agency/authority for Foreign Investment Approval is different depending upon (1) the amount of fixed assets of the industry in which the Indian investor makes investment, and (2) nature of the projects. As per the IEA, fixed assets of the industry include land, building, equipment, machinery, etc. but excludes working capital.

b. The table below presents the relevant Government authority that grants approval for Indian investment:

| Industry  | Application to | Approval from | Approval from |
|---|----------------|---------------|---------------|
| Investment in an industry with fixed assets up to NPR 2 billion   | DOI            | DOI           | NRB           |
| Industry having fixed assets of more than NPR 2 billion (for projects that do not fall under the jurisdiction of IBN) | DOI            | IIPB          | NRB           |
| Indian investment in specified projects under IBA   | IBN            | IBN           | NRB           |

c. Following are the projects that fall under the jurisdiction of the IBN:

| S. No. | Project   |
|--------|---|
| 1      | Fast track road, tunnel, railway line, rope-way, trolley bus as prescribed by the GON,  |
| 2      | Construction of international and regional airports and investment required for modernization and management of the existing airports,  |
| 3      | Solid waste management and treatment in urban areas,  |
| 4      | Chemical fertilizer production factories,   |
| 5      | Petroleum refinery plants,  |
| 6      | Large size bridges as prescribed by GON,  |
| 7      | a) Establishment of banks and financial Institutions with foreign investment of more than 51%<br>b) investment in establishment or operation of insurance and re-insurance companies with foreign investment of more than 51%,            |
| 8      | Medical colleges and hospitals or nursing homes with modern facilities having three hundred or more beds,   |
| 9      | Investment in hydropower production projects of 500 megawatt (MW) or more capacity,   |
| 10     | Development of special economic zone, export promotion or export refinement zones, special industrial zones or information technology parks,  |
| 11     | "Any infrastructure or service industry" with investment in fixed assets of NPR 10 Billion or more. Construction industry, minerals industry, tourism industry and aviation industry are defined as "infrastructure or service industry". |
| 12     | Foreign investment in Manufacturing (production) industries having fixed asset of NPR 10 billion or more.   |
| 13     | Investment in projects prescribed by GON that do not fall in the category mentioned above in 1 to 12 (The GON has not made any classification as of this date).   |

##### 5. Is there a minimum amount required to be invested?

The law has not imposed any minimum foreign investment. However, in practice, DOI has imposed requirement on a foreign investor to invest at least NPR 5 million (approx. USD 50,000) by each investor to be eligible for foreign investment.

##### 6. Is there a ceiling on foreign ownership?

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

| S.No. | Sectors  | Maximum foreign ownership percentage | Relevant law  |
|-------|--|--------------------------------------|---|
| 1.    | Telecommunication  | 80                                   | Telecommunication Policy, 1999.   |
| 2.    | Aviation<br>i. Domestic air passenger service<br>ii. International air passenger service | 49<br>80                             | Aviation Policy, 2006   |
| 3.    | Consultancy works (such as: accounting, legal service, management and engineering)       | 51                                   | FITTA   |
| 4.    | Insurance  | 80                                   | Directives on Registration of Insurer and Operation of Insurance Services 2016 (2073) |

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

It generally takes about 3 months to obtain approval from DOI and NRB and set up business in Nepal for Indian investors. However, if approval from IIPB/IBN is necessary, it may take up to 6 months.

**8. What documents are required to obtain foreign investment approval?**

a) The following documents are required to obtain foreign investment approval from DOI/IBN and NRB:

| S. NO. | DOI/IIPB/IBN Approval  | No. of Documents  |                   | S. No. | NRB Approval  | No. of Documents |                   |
|--------|--|-------------------|-------------------|--------|---|------------------|-------------------|
| 1.     | Application in standard format   | 1 Set (Original)  | Nepali            | 1.     | DOI/IIPB/IBN Approval for foreign investment;   | 1 Set (Original) | Nepali            |
| 2.     | Joint Venture Agreement (if there is more than one investor)   | 1 Set             | Nepali or English | 2.     | All other documents submitted to the DOI/IBN for the Approval of foreign investment   | 1 Set            | Nepali or English |
| 3.     | Share Subscription Agreement or Share Purchase Agreement (if investing in an existing company)   | 1 Set             | Nepali or English | 3.     | Approval required from the competent authority of India to make foreign investment in Nepal (if required).                        | 1 Set            | Nepali or English |
| 4.     | Project Report outlining the project background, market aspects, technical aspects, financial aspects, details of sources of funds, etc.   | 2 Sets            | Nepali or English | 4.     | Copy of the decision of the local company (entity) accepting the foreign investment.  | 1 Set (Original) | Nepali            |
| 5.     | Copy of certificate of registration and other registration documents (Memorandum of Association (“MOA”), Articles of Association (“AOA”), etc.) of the Indian investor (if company). | 1 Set             | Nepali or English | 5.     | Incorporation Certificate, MOA, AOA, Permanent Account Number (“PAN”) Certificate, Tax Clearance Certificate of the local company | 1 Set            | Nepali            |
| 6.     | Profile of the Indian investor.  | 3 Sets (Original) | English           | 6.     | Report of Credit Information Bureau evidencing that the local company is not blacklisted.   | 1 Set (Original) | Nepali            |
| 7.     | Financial credibility certificate issued by any bank in India.   | 3 Set (Original)  | English           | 7.     | Commitment letter of the Indian investor.   | 1 Set (Original) | English           |
| 8.     | Corporate resolution of the Indian investor.   | 3 Set (Original)  | English           | 8.     | Source of investment and the time schedule of investment by the Indian investor.  | 1 Set (Original) | English           |
| 9.     | Bio-data with passport size photo of the representative of the Indian investor.  | 5 Set             | English           | 9.     | Audited financial statements of the Indian Investor (if company) and passports of the directors of the Indian investor.           | 1 Set            | Nepali or English |

## Sector Specific Investment

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

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

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

Yes. However, the following are the criteria:

- (a) Special Economic Zone Regulations 2017 specifies the industries that can be established in Special Economic Zones ("SEZ"), and
- (b) a minimum of 75% of the goods or services produced need to be exported. Generally, most of the industries covered under the IEA are permitted to be set up in SEZs.

In addition to foreign investment approval from DOI/IIPB and NRB, license from the SEZ Authority is also required to set up the industry.

## Loan Investment

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

Yes, Indian investors can provide loan to local companies in Nepal. Sectors open for loan investment and approval requirement are the same as that of share investment discussed above.

### 12. Is there any criteria for a local borrower to obtain loan from an Indian investor?

Yes. NRB has issued circular such that local borrowers can obtain foreign loan as follows:

- a. local borrowers will have to demonstrate that loan is not available from local banks and financial institutions,
- b. if loan is not available locally then it can be obtained from Indian banks and financial institutions,
- c. If loan is not available from Indian banks and financial institution, then loan can be obtained from other Indian institutions. This would generally be an Indian institution which is not a bank or financial institution, like shareholder loan.

### 13. Is there a specific debt-equity ratio that is applicable to Indian investors while providing loan?

Yes, but this requirement is applicable to loan from Indian individuals. The amount of loan from Indian individual shareholder should be such that the debt to equity ratio of the Indian individual shareholder in the borrower entity does not exceed 60:40. As an example, if the amount of equity investment of such shareholder in the borrower entity is USD 4 million, then the amount of loan he/she can provide to the borrower entity would be capped at USD 6 million. This requirement is not applicable if the loan is obtained from Indian Banks or Financial Institution or from a corporate shareholder.

### 14. What is the interest rate applicable to Indian loan investments?

The interest rate should not exceed One Year Libor + up to 5.5%. If the loan is obtained from individual (like shareholder loan), the interest rate is One Year Libor + up to 2% margin. Indian loan investment is subject to the same interest rates as any other foreign loan investment.

## Transferring Technology

### 15. What is technology transfer?

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

- (a) Use of any technological right, specialization, formula, process, patent or technical know-how of foreign origin;
- (b) Use of any trademark of foreign ownership; or
- (c) Acquiring any foreign technical, consultancy, management and marketing services.

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

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

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

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

The laws have not specifically set out any such limit. However, such ceiling has been imposed on the basis of the decision of the competent government authority or as a matter of practice. For example, royalty or service fee that can be paid against technology transfer in a local liquor and beer industry cannot be more than 10 percent of the net profit or 6 percent of the total annual turnover of such industry (excluding government tax). Further, the Government authorities consider the rate of royalty or service fee on a case to case basis.



## CHAPTER 3

## REGISTERING AND COMMENCING BUSINESS

Nepalese laws provide different business vehicles for doing business in Nepal. These business vehicles include private firm, partnership firm, limited liability company (private company or public company) and cooperatives. However, the most commonly used business vehicle is a private company.

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

A liaison/contact office can also be registered in Nepal. However, a liaison office cannot undertake business activities in Nepal and generate revenue.

## Registration of Business

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

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

- a) Open a new company,
- b) Invest in an existing company, or
- c) Register a branch office.

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

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

- **Registration of Company**

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

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

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

c) Government Fee: The fees for registering a local company are set out below:

| Registration Fee for Private Company  |   | Registration Fee for Public Company    |  |
|---------------------------------------|---|--|--|
| Authorized Capital (NPR)              | Fee (NPR)   | Authorized Capital (NPR)               | Fee (NPR)  |
| 2.5 million upto 10 million           | 16,000/-  | For 10 million                         | 15,000/-   |
| More than 10 million upto 20 million  | 19,000/-  | More than 10 million upto 100 million  | 40,000/-   |
| More than 20 million upto 30 million  | 22,000/-  | More than 100 million upto 200 million | 70,000/-   |
| More than 30 million upto 40 million  | 25,000/-  | More than 200 million upto 300 million | 100,000/-  |
| More than 40 million upto 50 million  | 28,000/-  | More than 300 million upto 400 million | 130,000/-  |
| More than 50 million upto 60 million  | 31,000/-  | More than 400 million upto 500 million | 160,000/-  |
| More than 60 million upto 70 million  | 34,000/-  | More than 500 million                  | 3000/- for every additional 10 million exceeding NPR 500 million |
| More than 70 million upto 80 million  | 37,000/-  |  |  |
| More than 80 million upto 90 million  | 40,000/-  |  |  |
| More than 90 million upto 100 million | 43,000/-  |  |  |
| More than 100 million                 | 30/- for every additional 0.1 million exceeding 100 million |  |  |

d) Timeline: It generally takes about 5 to 7 days.

- **Tax Registration**

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

| S.No. | List of Document   | No. of Documents  | Language |
|-------|--|-------------------|----------|
| 1.    | Application form   | 1 Set (Original)  | Nepali   |
| 2.    | Registration Certificate, MOA, AOA of the local company                    | 1 Set             | Nepali   |
| 3.    | Corporate Resolution of the local company to register for PAN              | 2 Sets            | Nepali   |
| 4.    | Copy of prior approval of foreign investment                               | 1 Set (Notarized) | Nepali   |
| 5.    | Copy of rent agreement or land ownership document of the registered office | 2 Sets            | Nepali   |
| 6.    | Map of Business Location   | 1 Set (Original)  | Nepali   |
| 7.    | Photograph and passport of authorized representative                       | 5 Set and 1 Set   | Nepali   |

- **Industry Registration**

The local company also has to be registered as an industry with the DOI. It generally takes around 1-2 days. Following documents need to be submitted for industry registration along with the government fee of NPR 100:

| S.No. | List of Document   | No. of Documents | Language |
|-------|--|------------------|----------|
| 1.    | Application  | 1 Set (Original) | Nepali   |
| 2.    | Copy of certificate of registration and MOA and AOA of the local company         | 1 Set            | Nepali   |
| 3.    | Corporate resolution of the local company to register the company as an industry | 1 Set            | Nepali   |

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

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

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

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

| S.No. | List of Document  | No. of Documents   |
|-------|---|--------------------|
| 1.    | (a) Approval obtained from the competent authority by the Indian company to carry on its business or transaction in Nepal, or<br>(b) agreement with the competent authority                                       | 1 Set (Original)   |
| 2.    | Copy of the memorandum, articles of association and certificate of incorporation of the foreign company and its Nepali translation  | 2 Sets (Notarized) |
| 3.    | Full name, address of the main (head) office of the Indian company, principal place of transaction, date of incorporation, paid up capital and details of main objectives of the Indian company                   | 1 Set (Notarized)  |
| 4.    | The details of the citizenship, name and address of directors, manager, company secretary or chief officer of the Indian company  | 1 Set (Notarized)  |
| 5.    | Name and address of the person located or residing within Nepal authorized by the Indian company to receive, on behalf of the foreign company, the notice, summons etc., issued in the name of the Indian company | 1 Set (Notarized)  |
| 6.    | The principal place within Nepal where the Indian company is to operate its branch office and the full address of the office of the Company located at such place   | 1 Set (Notarized)  |
| 7.    | Details of the proposed investment and transaction if the company is to carry out any transaction or business   | -                  |
| 8.    | The proposed date of commencement of business.  | 1 Set (Notarized)  |
| 9.    | Declaration from the director/s or his/their representative on behalf of the Indian company that the particulars submitted by the Indian company are true   | 1 Set (Notarized)  |
| 10.   | Board Resolution of the Indian company  | 1 Set (Notarized)  |

b) Government Fee: The fees for registering a local company are set out in the table below:

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

c) Timeline: It generally takes around 10 days.

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

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

The key differences between a company and branch office are as follows:

| Category   | Company   | Branch Office  |
|--|---|--|
| Requirement of regulatory approval for establishment | FDI approval from DOI/IIPB/IBN and NRB.   | Agreement with GON or approval from competent authority for registration of branch office.   |
| Legal Regulation                                     | Governed primarily by FITTA, FERA and Companies Act   | Governed primarily by the Companies Act  |
| Right to Repatriation                                | Guaranteed specifically by FITTA and FERA   | No specific provision under the FITTA and FERA for branch office.  |
| Separate entity                                      | Yes   | No   |
| Ability to own land and building                     | Yes   | Not clear.   |
| Liability  | Limited liability of the shareholders. The liability of the shareholders will be limited to its amount of investment made in Nepal. | Unlimited. If the assets of the branch office are not sufficient to settle all its liabilities in Nepal, then its head office will need to bear the liability. |
| Capacity to file a law suit                          | Yes   | Yes  |
| Compliance requirement                               | More as compared to the branch office.  | Less as compared to the subsidiary company.  |

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

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

#### 6. How can a bank account be opened?

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

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

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



| Sector                                   | License Authority                     |
|--|---------------------------------------|
| Hydropower                               | Department of Electricity Development |
| Banking and Financial Institutions       | NRB                                   |
| Information and Communication Technology | Nepal Telecommunication Authority     |
| Transport                                | Department of Roads                   |
| Education                                | Department of Education               |
| Health Care                              | Department of Health Services         |
| Agriculture                              | Department of Agriculture             |
| Tourism                                  | Department of Tourism                 |
| Mines and Minerals                       | Department of Mines and Geology       |

## Environmental Clearance

### 8. Is environmental clearance compulsory for all industries?

No. Only certain industries that may have an impact on health and the environment are required to obtain environmental clearance.

There are two types of environmental studies: Initial Environment Examination (“IEE”) and Environmental Impact Assessment (“EIA”). The Environment Protection Rules 1998 has listed the industries which are required to conduct IEE or EIA. The list of industries required to conduct IEE and EIA are regularly updated by the GON by publishing a notice in the official Gazette.

Generally EIAs are conducted in large scale projects like hydropower generation plants with capacity of more than 50 MW whereas hydropower generation projects with capacity of less than 50 MW are required to conduct IEE. Similarly, hotels with 50-100 beds are required to conduct IEE and hotels with more than 100 beds have to conduct EIA. Further, the law also provides for requirement to obtain pollution control certificate. However, this provision has not been implemented in actual practice.

### 9. What is the process of conducting IEE in Nepal?

The IEE general process is as follows:

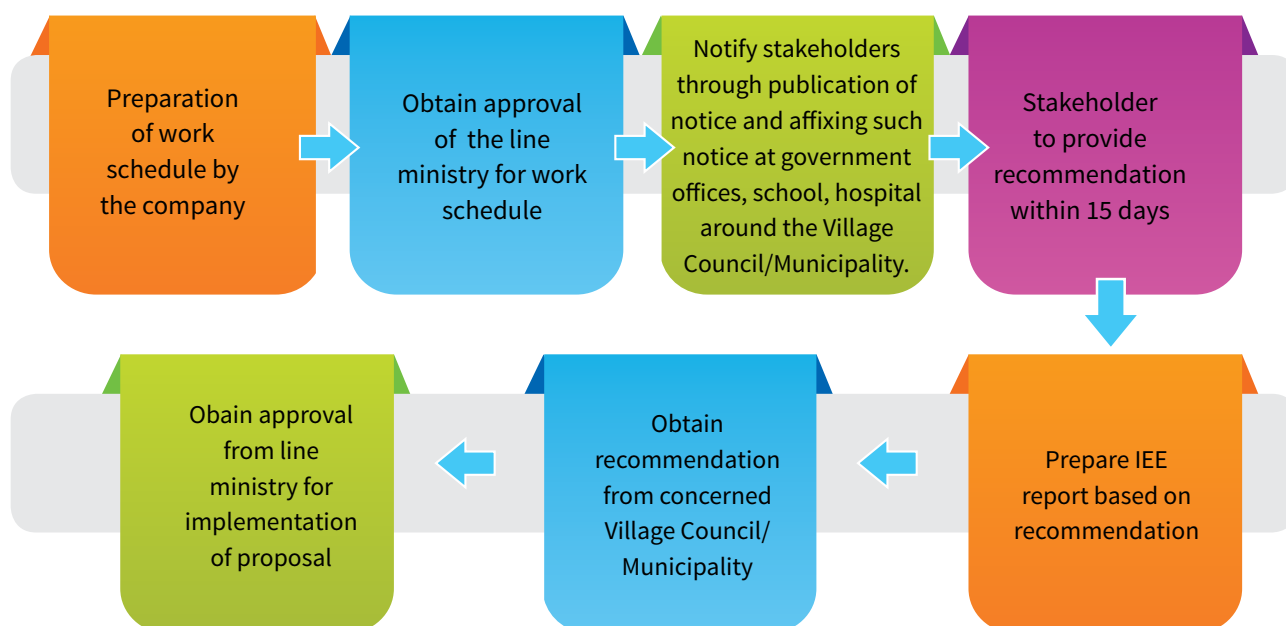


Figure: IEE general process

**10. What is the process of conducting EIA in Nepal?**

The EIA general process is as follows:



Figure: EIA general process

**11. Are there any other environmental clearances required?**

In addition to approval of EIA requirements, projects may be required to meet other compliance requirements, such as prohibition to emit waste beyond the prescribed standard, prohibition to contaminate water resources, etc. during the operation of business.

## CHAPTER 4

## PROPERTY LAWS

## Owning Or Leasing Immovable Property

**1. What are the types of lands in Nepal?**

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

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

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

Government land includes roads, paths, and railways and also includes forests, shrub lands, jungles, rivers, streams and marshlands not belonging to anyone. Government land also includes lakes and ponds and their banks, canals and channels, waste and uncultivated land, land located on sharp hillsides and paths and sand vacated by river, which are owned by the GON or declared as public land by the GON.

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

Indian investors cannot directly own land in Nepal. However, a company registered in Nepal by an Indian investor is considered as a local company and can own land.

FITTA prohibits foreign investment in real estate business. Hence, Indian investment is not allowed in real estate business- such as buying and selling of land- in Nepal. However, Indian investors can make investment in housing business. Housing business is considered as separate from real estate in Nepal, and includes activities such as construction of housing units/complexes.

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

Indian investors can rent houses in their individual capacity but are restricted from leasing land for the purpose of developing or constructing buildings, or for agricultural purposes. Leasing of land is governed separately as opposed to house rent. In this context, Indian investors in their individual capacity can enter into house rent agreements, but cannot lease land in order to develop and derive benefit and profit there from.

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

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

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

**5. Has Nepal implemented any land zoning laws?**

National Land Use Policy, 2012 (2069) envisages the following classification of land, (a) agricultural, (b) residential, (c) commercial, (d) industrial, (e) forest, and (f) area of public utility. These classifications are not statutory and currently the GON has not imposed restriction on the use of the land on the basis of such classification.

## 6. Is there a ceiling on land ownership?

Yes. Land ceilings are imposed on industries depending on (i) the type of industry, and (ii) the geographical area where the land is situated. Such land ceiling is applicable to all industries, irrespective of whether such industries have foreign investment or not.

The existing land ceiling is as follows:

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

If land is required beyond the ceiling, the company is required to take specific approval from the governing ministry. According to a notice published in the Nepal Gazette on October 11 2017, certain manufacturing, energy, farming, tourism, service and construction companies may apply and be approved for additional land. The governing ministry approves additional land area above the prescribed ceiling to a specified limit.

If additional land requirement, exceeding the additional specified limit applicable to each sector of industry is surpassed, approval from the Council of Ministers is required to own the excess land.

## Providing Security Against Loans

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

The matters related to creation and enforcement of the security interests in favor of the lenders are primarily governed by the Country Civil Code, 2017 (“Civil Code”) and Secured Transaction Act 2006. Generally, there is no restriction on the type of property, moveable or immovable, that can be provided as security against loans. Security interest may be created on fixed assets, current assets, tangible and intangible assets.

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

The Civil Code restricts security interest to be created on immovable property in favor of a foreigner without prior approval of the GON. Currently, such approval is granted by the GON in the form of decision of the Council of Ministers. Similarly, a prior approval from NRB is required to pledge shares in favor of the foreigner. Though not required by law, in practice, prior approval from DOI and NRB are obtained for creating security interest in favor of the foreigner as part of the approval of the foreign investment.

### 9. Can security interests be created over land?

Yes. However, prior approval from the GON is required for creation of security interests on land and fixed assets in favor of the foreigners.

Further, there is a limit on the maximum percentage of land that can be given as security in case land holding is above the permitted ceiling. Pursuant to the Order Relating to Exemption of Land Ceiling, 2017 (2074), only 50% of the total land owned by the company can be mortgaged in favor of the lenders.

The Civil Code requires the competent party to conclude a deed or agreement while creating security interest over the property. The deed so concluded is required to be registered at the relevant office for acquiring legal validity. The registration of such deed is done by the relevant Land Revenue Office (“LRO”) having jurisdiction over the area in which the immovable property is situated. Registration with the LRO is a mandatory requirement for the perfection of the security interests over the immovable assets.

**10. Can security interests be created over movable assets?**

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

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

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

## Securing Intellectual Property Rights

**11. What is the law that governs Intellectual Property?**

Major laws that govern the protection and enforcement of intellectual property in Nepal are the Copyright Act, 2002 (2059) and the Patent Design and Trademark Act 1965 (2022) (“PDTA”). The regulatory authority under the Copyright Act is the Copyright Registrar’s Office for administrative functions and the District Court for judicial functions. The regulatory body under the PDTA is DOI which is a quasi-judicial body.

Nepal is also a signatory to multiple major international treaties for protection of intellectual property, like the Paris Convention for Protection of Industrial Property 1883 (Paris Convention), Trade Related Aspects of Intellectual Property Right 1994 (TRIPS Agreement) and Convention Establishing World Intellectual Property Organization 1967.

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

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

- a. Copyright: grants authors, artists and other creators protection for their literary and artistic creations, generally referred to as works.
- b. Trademark: a word, or symbol, or picture or a combination thereof to be used by any firm, company or individual in its products or services to distinguish them with the product or services of others.
- c. Patent: a useful invention relating to a new method or process of manufacture, operation or transmission of any material or a combination of materials, or that is made on the basis of a new theory or formula.
- d. Design: a form or shape of any material manufactured in any manner that a manufacturing company or producer uses for its products.

### 13. How can a patent be protected in Nepal?

The procedure for a patent to be registered begins by submitting an application for its registration to the DOI along with the details of the owner/inventor of any process/ technique/formula, along with the description of the patent. The DOI, upon receiving such application, investigates on the eligibility for registration of the patent and the authenticity/novelty of the invention. It then decides if the product shall be registered and published.

A registered patent may be cancelled upon meeting certain negative criteria. However, the DOI shall, before cancelling the registration of the patent, provide an opportunity to the patent owner to show reasons as to why the patent should not be cancelled. In case a third party has objection to the registered patent once published, it shall file a complaint to the Department within 35 (thirty-five) days of acquiring knowledge of such patent.



Figure: Procedure for Registration of Patent

### 14. What is the term of protection of patent?

A patent is protected for 7 (seven) years when registered at the DOI. Further, the patent owner may renew the patent twice, for a period of 7 (seven) years at a time. The renewal procedure should be initiated 35 days before the expiry of the patent protection.

### 15. How can a design be protected in Nepal?

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

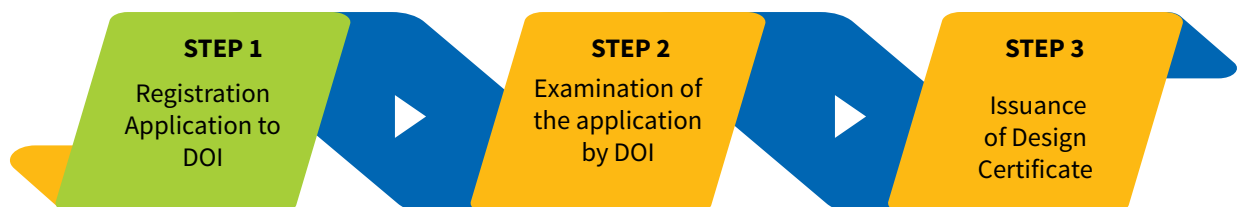


Figure: Procedure for Registration of Design

### 16. What is the term of protection of design?

The term of design is for a period of 5 (five) years, which is further subject to renewal twice for a period of 5 years at a time and shall be applied for renewal 35 days before the expiry of the design.

### 17. What is the procedure for filing a trademark?

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

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



*Figure: Procedure for Registration of Trademark*

Additionally, pursuant to FITTA, the use of foreign trademark comes under the ambit of Technology Transfer. The FITTA states that approval of the DOI is required for technology transfer. In view of this provision, the permission for technology transfer has to be taken from the DOI for licensing of foreign trademark.

### 18. What is the timeline for registration of trademark?

The general time period required to register a trademark is about 9-16 months from the date of filing of application for the trademark. However, the timeline might extend if opposed.

### 19. What is the term of protection of trademark?

The term of trademark is for a period of 7 (seven) years, which is further subject to renewal indefinitely for a period of 7 years at a time and shall be applied for renewal 35 days before the expiry of the trademark.



## CHAPTER 5

## HUMAN RESOURCE

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

The matter relating to employment in Nepal is primarily governed by

- i. Labour Act 2017 (2074) (“Labour Act”) and
- ii. Labour Rules 2018 (2075) (“Labour Rules”) in Nepal
- iii. Social Security Act 2017 (2074) (“Social Security Act”)
- iv. Social Security Rules, 2018 (2075) (“Social Security Rules”)

(Labour Act, Labour Rules, Social Security Act, Social Security Rules collectively “Labour Laws”). The Department of Labour (the “DOL”) and Labour Office are the authorities to regulate matters relating to employment.

**2. What is the applicability of the Labour Act?**

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

## Hiring

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

The employees in any entity can be hired in different ways which includes (a) Regular Employment, (b) Work Based Employment, (c) Time Bound Employment, (d) Casual Employment and (e) Part-time Employment.

**4. When can a company hire foreign national?**

The Labour Act restricts any foreign nationals to work in Nepal without obtaining work permit. The foreign nationals (a) having diplomatic immunity, or (b) who are not required to obtain work permit under a treaty or agreement entered into with the GON are however exempted from the work permit requirement.

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

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

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

**6. Is employment agreement mandatory?**

The Labour Act requires the employer to provide written employment agreement to all employees. However, the written employment agreement is not mandatory for casual employees (working for seven days or less in a month). Furthermore, the Labour Rules provide certain details which should be incorporated in the employment agreement.

\*The original text of the treaty is not available and is based on the text in secondary sources such as websites.

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

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

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

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

## 8. What is the maximum probation period?

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

## Remuneration And Working Hours

### 9. What is the maximum working hour?

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

### 10. Is there any provision for overtime?

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

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

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

| S.No. | Minimum Remuneration/ Wage | Basic Remuneration | Dearness Allowances | Total        |
|-------|----------------------------|--------------------|---------------------|--------------|
| 1     | Monthly                    | NPR 8,455/-        | NPR 4,995/-         | NPR 13,450/- |
| 2     | Daily                      | NPR 325/-          | NPR 192/-           | NPR 517/-    |
| 3     | Hourly                     | NPR 43/-           | NPR 26/-            | NPR 69/-     |

**12. Is there any mandatory requirement of remuneration increment?**

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

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

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

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

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

Each employee is entitled to provident fund and gratuity from the first day of employment.

\*The Labour Act has provided 98 days maternity leave out of which 60 days are fully paid but the Safe Maternity and Reproductive Health Right Act 2018 (2075) has provided maternity leave for 98 days fully paid.

**a. Provident fund**

Provident fund is the contributory fund i.e. 10% of basic salary by both the employer and the employee every month. The employer is required to deduct 10% from the basic remuneration of the employee every month and deposit the same to the Social Security Fund (“SSF”) (upon enrollment with SSF) adding an equal amount to it.

**b. Gratuity**

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

**c. Deposition of Provident Fund and Gratuity**

The allocated amount of provided fund and gratuity should be deposited in the SSF. However, such amount can be deposited in an approved retirement fund or separate account until SSF is established.

**15. What are the insurance requirements for employees?**

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

**16. Is there any Social Security System in Nepal?**

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

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

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

**17. What is the Contribution for the SSS?**

The employer and employee should contribute 20% and 11% respectively of the basic remuneration of the employee for SSF every month. The contribution includes the contribution towards the provident fund by the employer and employee and contribution towards gratuity by the employer.

The Labour Act provides that if the employer contributes to the SSS to cover the provident fund, gratuity, medical and insurance such employer is not required to make separate arrangement for such benefits. However, there are certain gaps between the requirement of the Labour Act and the coverage provided under the SSS. Therefore, the SSS may not fully discharge the employer on certain liabilities such as medical coverage.

**Misconduct and Cessation**

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

The Labour Act provides the list of misconducts and disciplinary actions for such misconducts. The disciplinary actions include (a) Reprimand, (b) Deduction of One Day Salary, (c) Withholding Annual Increment or Promotion and (d) Dismissal. The Labour Act provides the procedures for disciplinary actions such as hearing opportunity, timeline, authority to take actions, etc.

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

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

**20. What is the notice requirement under the labour laws?**

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

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

**Miscellaneous****21. What is the mechanism for transfer of employee?**

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

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

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

**23. Is there any requirement of Labour audit?**

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

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

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

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

**25. What is the mechanism for settlement of disputes?**

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

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

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

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

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

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

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

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

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

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

## CHAPTER 6

## IMPORT AND EXPORT OF GOODS

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

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

- a) Export and Import Control Act 1957 (“Export and Import Control Act”),
- b) Customs Act, 2007 (the “Customs Act”)
- c) Customs Rules, 2007 (the “Customs Rules”),
- d) Circulars issued by NRB from time to time,
- e) Annual Finance Act (which is based on the annual budget speech of the Finance Minister) enacted by the GON.

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

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

Yes. If the goods to be exported at a time amounts to more than Nepalese Rupees Five Lakhs or if goods to be imported exceeds Nepalese Rupees Fifty Thousand, then the local company has to obtain export import code (“EXIM Code”) from the Department of Customs.

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

| S.N. | Documents  |
|------|--|
| a.   | Application Letter                               |
| b.   | Industry Registration Certificate                |
| c.   | PAN certificate                                  |
| d.   | Recommendation of DOI/IBN                        |
| e.   | Recommendation letter by the bank                |
| f.   | Photograph of the head of the company            |
| g.   | Sketch Map to identify the office of the company |

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

Yes, export and import of certain goods are prohibited and restricted. GON by publishing a notice in the Nepal Gazette, specifies the list of restricted, prohibited and permitted goods. Further, circulars issued by the NRB also prescribe lists of goods that are restricted. Certain goods are prescribed with quantitative restriction while for others approval is required to be obtained on the recommendation of concerned authority. The table below illustrates examples of such prohibition, restriction and approval requirement, and is not exhaustive.



| IMPORT  |   | EXPORT                     |                               |   |
|---|---|----------------------------|-------------------------------|---|
| Prohibited  | Require approval/<br>recommendation   | Prohibited                 | Quantitative<br>restriction   | Require approval/<br>recommendation   |
| Ganja, Charas,<br>Afim                            | Weapons, on<br>recommendation of<br>Home Ministry   | foreign and local<br>coins | paddy, rice,<br>wheat, sugar, | Yarshagumba on<br>approval of Department<br>of Forests  |
| Incandescent<br>light bulbs                       | Radio equipment on<br>recommendation of the<br>Ministry of Information<br>and Communication | statue of deities          | lentils                       | Imported raw material<br>for industry which<br>were not used, on<br>recommendation of<br>concerned department |
| Beverage with<br>more than 60%<br>alcohol content |   | explosives                 |                               |   |

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

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

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

| S.No. | Import from any other country except India   | S.N. | Import from India  |
|-------|--|------|--|
| 1.    | Banking documents related to payment process such as letter of credit                                  | 1.   | Invoice  |
| 2.    | Invoice  | 2.   | Packing list   |
| 3.    | Packing list   | 3.   | Permit/License/Recommendation from the concerned Government agency if required under the existing laws   |
| 4.    | Bill of lading or Airway Bill  | 4.   | If the goods being imported under inbound procedures, Nepal Invoice (Inbound Form), Foreign Currency Control Form, Banking Documents related to payment process, etc |
| 5.    | Certificate of origin  | 5.   | D.R.P. Form if the goods are being imported under the Duty Refundable Procedures (D.R.P.)  |
| 6.    | Duly completed Foreign Exchange Control Form   |      |  |
| 7.    | If any goods are to be imported using India as transit, then documents related to such transit         |      |  |
| 8.    | Delivery order of the concerned airlines company if the goods are imported by air                      |      |  |
| 9.    | Permit/License/Recommendation from the concerned Government agency if required under the existing laws |      |  |

| S.No. | Export to any other country except India   | S.N. | Export to India  |
|-------|--|------|--|
| 1.    | Banking documents related to payment process such as letter of credit                                  | 1.   | Invoice  |
| 2.    | Invoice  | 2.   | Packing list   |
| 3.    | Packing list   | 3.   | Permit/License/Recommendation from the concerned Government agency if required under the existing laws |
| 4.    | Certificate of origin  | 4.   | Certificate of origin  |
| 5.    | Duly completed Foreign Exchange Control Form   |      |  |
| 6.    | Permit/License/Recommendation from the concerned Government agency if required under the existing laws |      |  |

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

#### 5. Is test marketing permissible for importing goods in Nepal?

Yes. Test marketing for a manufacturing company with foreign investment is permissible. Prior to the enactment of IEA 2016, manufacturing industries were permitted to carry out test marketing as per Decision no. 3 of Industrial Promotion Board dated January 14, 2010 to examine the viability of the product in the Nepalese market. Accordingly, companies had obtained approval for test marketing. However, at present, IEA 2016 regulates the matter relating to test marketing and permits test marketing within prescribed terms and conditions.

The prescribed terms and conditions are likely to be set out in the new Industrial Enterprise Regulation which has not yet been published.

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

The custom duty of any goods shall be determined according to the tariff (rate of duty) prevailing on the date on which the Declaration Form of such goods is registered at the Customs Office. Nepal uses the Harmonized commodity Description and Coding System to classify products and duty. The rates for 2018/19 can be accessed in [https://www.customs.gov.np/upload/documents/Customs%20Tarrif%202018\\_19\\_2018-10-02-11-20-12.pdf](https://www.customs.gov.np/upload/documents/Customs%20Tarrif%202018_19_2018-10-02-11-20-12.pdf).

#### 7. How are imported goods paid for?

Purchases made from India are generally paid for in Indian Rupees. The goods being exported from India are generally exempted from goods and service tax. The exception to the payment in Indian currencies is the list NRB has provided through Unified Circular issued to banks, financial institutions and other entities transacting in foreign currency 2016 (2074) of 161 products, the import of which from India, can be made against payment in convertible foreign currency like United States Dollars; this includes items like furnace oil, bitumen and a list of chemical components.

## CHAPTER 7

## TAXATION

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

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

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

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

**2. Are there any local taxes applicable?**

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

**3. What are the incomes subject to taxation?**

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

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

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

| Industries  | Prevailing Tax Rates           |
|---|--------------------------------|
| <ul style="list-style-type: none"> <li>• Manufacturing Industries and Hydropower Industries;</li> <li>• Income earned from operation of Special Industries, construction and operation of Roads, Bridge, Tunnel, Rope-Way, Fly overs and operation of Trolley Bus or Tram;</li> <li>• Income earned by Cooperatives registered under Cooperatives Act 2017 from transactions other than tax exempt transactions</li> <li>• Income earned from export</li> <li>• The taxable income of an entity engaged in such projects to build own, operate and transfer the public infrastructure to the GON</li> </ul> | 20%<br>(Concessional Tax Rate) |
| General Corporate Tax   | 25%                            |
| Industries relating to Cigarette, Tobacco, Cigar, Liquor, Beer, Banks, Financial Institutions, General Insurance Business, Petroleum and businesses relating to Telecommunication and Internet Service, Money Transfer, Capital Market, Stock Exchange, Merchant Banking, Commodity Future Market, Stock Exchange and Commodity Broker Business.  | 30%                            |

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

The resident natural persons are subject to income tax at the rate of 10% to 36% based on his/her annual income.

## 6. What are the withholding taxes applicable to businesses?

The withholding tax/tax deducted at source (TDS) applicable to businesses is as follows:

| Income Head                                       | Rate of TDS  |
|---|--|
| Service Charge / Fees                             | 15%<br>Companies registered in VAT are subject to TDS at 1.5%. |
| Interest  | 15%  |
| Royalties   | 15%  |
| Dividends   | 5%   |
| Repatriation of income by permanent establishment | 5%   |

### Withholding of Capital Gain Tax on Shares

| Nature of Entity         | Nature of Seller                    | Gain from Sale of Shares to be Withheld by Entity | Additional Tax to be paid by the Seller | Total Tax on Gain from Sale of Shares |
|--------------------------|-------------------------------------|---|---|---------------------------------------|
| Listed Company           | Resident Natural Person             | 7.5%  | -                                       | 7.5%                                  |
|                          | Resident Company                    | 15%   | 10%                                     | 25%                                   |
|                          | Non Resident Natural Person/Company | 25%   | -                                       | 25%                                   |
| Unlisted/Private Company | Resident Natural Person             | 10%   | -                                       | 10%                                   |
|                          | Resident Company                    | 15%   | 10%                                     | 25%                                   |
|                          | Non Resident Natural Person/Company | 25%   | -                                       | 25%                                   |

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

## 7. What are the tax incentives available to entities?

The ITA has provided tax incentives on different criteria. The tax incentives are provided on the basis of (a) nature of industry, (b) number of employees, (c) location of industry, and (d) business vehicle such as listed company or non-listed company etc.

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

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

**A. Nature of Industries:**

| Industries   | Incentives   |
|--|--|
| Persons commencing commercial operation or production of mining and exploration of petroleum and natural gases by April 12 2024 A.D.                                     | 100% exemption on income tax up to first 7 years of commercial operation of business and 50% income tax for the period of 3 years thereafter (effective rate 15%)              |
| Person or entity having license commercially generates, transmits or distributes electricity generated by hydropower, solar, wind or bio-materials by April 12 2024 A.D. | 100% exemptions on income tax for the first 10 years and 50% exemptions for the next 5 years (effective rate 10%).   |
| Tourism Industries established with the investment of above NRs 2 billion  | 100% exemption on income tax up to first 5 years of operation of business and 50% income tax for the period of 3 years thereafter (effective rate 12.5%).                      |
| Aviation Companies operating International Flights established with the investment of above NRs 2 billion  | 100% exemption on income tax up to first 5 years of operation of business and 50% income tax for the period of 3 years thereafter (effective rate 12.5%).                      |
| Industries producing and processing local tea, Dairy Industries and Textile Industries   | 50% exemption in the rate of tax in the income earned through selling of their manufactured products (effective rate 10%)  |
| Micro Enterprise   | 100% exemption on income tax up to first 5 years of operation of business.<br>100% exemption for additional 2 years in case such industry is operated by women industrialists. |
| Income earned from export of goods manufactured by manufacturing industries  | Exemption of 25% on rate of the tax (effective rate 15%)   |

**B. Number of Employees:**

| Sectors   | Entities  | Incentives  |
|---|---|---|
| <b>Special and IT Industries providing direct employment to</b> | 100 or more Nepalese nationals throughout the year  | The tax is applicable only 90% of the applicable rate in such income year (effective rate 18%)  |
|   | 300 or more Nepalese nationals throughout the year  | The tax is applicable only 80% of the applicable rate in such income year (effective rate 16%)  |
|   | 500 or more Nepalese nationals throughout the year  | The tax is applicable only 75% of the applicable rate in such income year (effective rate 15%)  |
|   | 1000 or more Nepalese nationals throughout the year   | The tax is applicable only 70% of the applicable rate in such income year (effective rate 14%)  |
|   | 100 or more Nepalese nationals throughout the year including 33% women, Dalits or handicapped       | additional 10% exemption in applicable rate   |
|   | more than 500 people throughout the year and established upon investment of more than NRs 1 billion | 100% exemption on income tax for the first 5 years from the date of commencement of business and 50% exemption for the period of next 3 years thereafter. |

**C. Location of Industry:**

| Location  | Exemption/Concessions   |
|---|---|
| Special Economic Zone   | 100% tax exemption on dividend distributed for the first 5 years from the commencement of the business and 50% exemption for the next 3 years. (effective rate 2.5%)<br>50% of income tax on income generated through service charge or royalty for technology transfer or management services provided by a foreign investor |
| Special Economic Zone in Himali or any Hilly Districts notified by GON<br>(No such districts are notified as of now)  | 100% of income tax for the first 10 years from the date of commencement of the business and 50% exemption for the following years.  |
| Established in other than those in Himali and Hilly Districts notified by the GON   | 100% of income tax for the first 5 years from the date of commencement of the business and 50% exemption for the following years.   |
| Special Industries established in Least Developed, Undeveloped and Under Developed Regions  | The tax is applicable at 10%, 20% and 30% of the applicable rate respectively for up to 10 years including the year of commercial operation.  |
| Fruit based cider and wine industries established in Least Developed Regions  | 40% income tax exemption for the first 10 years from commercial operation (effective rate 12%)  |
| Industries relating to software development, data processing and cyber cafe, digital mapping established inside Technology Park, Biotech Park and IT Park specified in Nepal Gazette. | 50% exemption in applicable tax rate in the income of such industries (effective rate 12.5%)  |

**D. Listed/Non-Listed Companies:**

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

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

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

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

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

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

**10. When is the VAT registration required in Nepal?**

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

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

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

**11. Does Nepal have Double Taxation Treaty with India?**

The GON and Government of the Republic of India have entered into a Double Tax Avoidance Treaty (“DTAA”). The current DTAA, the Agreement Between the GON and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income 2011, was entered into on Nov. 27, 2011 and was effective to Nepal from July 16, 2012. The DTAA sets out mechanisms for avoidance of double taxation and fiscal evasion. The DTAA refers to ITA for the taxes that may be imposed in Nepal under the DTAA. It means that the DTAA imposes tax on the income derived from (a) business, (b) investment, or (c) employment. The DTAA defines the rule of taxing authority as to which country to tax on the basis of source of income and business activities. The major head of income, rate of tax and taxing authority under the DTAA is briefly provided in the following table.

| S.N. | Heads                   | Rate (up to)   | Applicable Jurisdiction   |
|------|-------------------------|--|---|
| 1    | Dividends               | <ul style="list-style-type: none"> <li>5% if the beneficial owner is a Company holding at least 10% of the shares of the Nepali Entity</li> <li>10% in all other cases</li> </ul> (Rate Applicable in the Contracting State e.g. Nepal ) | Both  |
| 2    | Interest                | 10%<br>(Rate applicable in the Contracting State, e.g. Nepal)  | Both  |
| 3    | Royalties               | 15%<br>(Rate applicable in the Contracting State e.g. Nepal)   | Both  |
| 4    | Permanent Establishment | 5%<br>(In Nepal as per ITA)  | Country where PE is established.  |
| 5    | Business Profits        | 25%<br>(In Nepal as per ITA)   | Country of the incorporation of the company.                            |
| 6    | Capital Gains           | 25%<br>(In Nepal as per ITA)   | Country where the Company whose shares are being alienated is resident. |



## CHAPTER 8

## REPATRIATION OF INVESTMENT AND RETURNS

**1. What earnings can an Indian investor repatriate?**

An Indian investor is allowed to repatriate (i) earnings through dividend or through sale proceeds against investment in shares (ii) investment in loan which has been received through reimbursement of principal loan amount and through the interest and (iii) technology transfer fees, royalty and license fees that have been earned through technology transfer.

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

Yes. There is no capping on the amount or percentage that an Indian investor can repatriate in terms of sale proceeds, dividend, principal and interest. However, a foreign expatriate can repatriate only 75% of his or her income in Nepal.

**3. Is government approval required for repatriation?**

A prior approval from NRB is required for repatriation. Though not specifically required by law, a recommendation from the DOI is also required. Industries in specific industries- such as in hydropower, Banking and Financial Institutions, Telecommunication sector also require approval from the concerned authority for repatriation of investment.

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

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

- (a) **Lock-in-period:** A lock-in-period of one year is applicable to investment made in the form of shares. This means that the Indian Investor will not be able to sell its shares within 1 year from the date when the money is transferred to Nepal. In the case of listed companies, the lock-in period applicable to the promoter or other category of shares (except public shares) is prescribed as three (3) years, contrary to the 1 year lock in period specified in the commitment letter for approval.
- (b) **Valuation requirement:** In the case of a listed company, only listed price of the shares can be repatriated. However, for unlisted shares, fair value amount of the shares of the company is required to be determined by a Chartered Accountant. Such valuation is required to be conducted in accordance with the Nepal Financial Reporting Standards.
- (c) **Payment of tax:** For all forms of repatriation, applicable tax is required to be paid and the tax payment slip will need to be submitted to NRB.
- (d) **Submission of documents:** An application for repatriation will need to be submitted to NRB along with all the documents prescribed in the NRB circular.
- (e) **Government approval:** Recommendation from the DOI and prior approval from NRB will be required. NRB will grant approval for repatriation only if prior investment was duly recorded as foreign investment with NRB.

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

EXITING FROM BUSINESS

1. How can an Indian investor divest its investment?

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

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

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

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

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

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

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

a. Divestment of shares of a private company

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

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

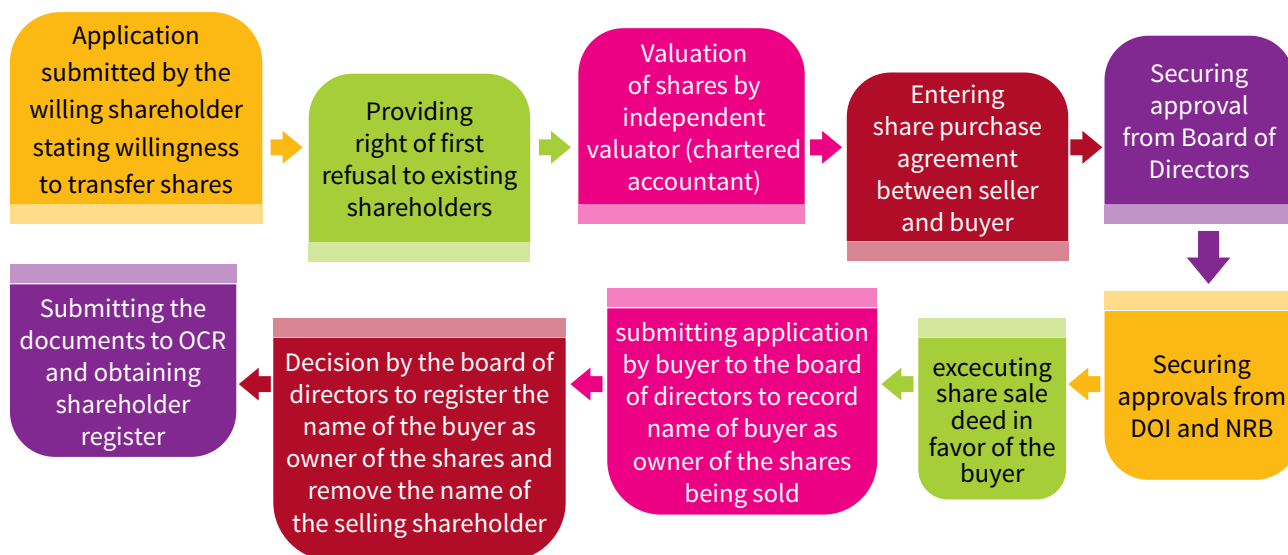


Figure: Process of divestment of shares in Private Company

## b. Divestment of shares of unlisted public companies

### i. Divestment of Shares through OTC market

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

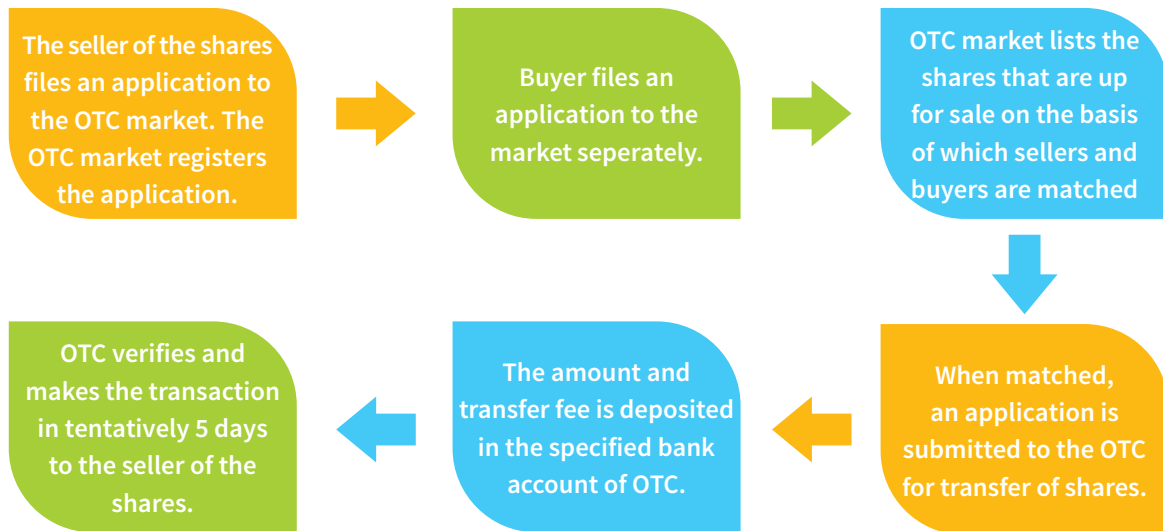


Figure: Process of sale of shares through OTC market

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

### ii. Transfer through put option

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

## c. Divestment of shares of public listed companies

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

### i. Selling shares through the securities market

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

### ii. Bulk transfer

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

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

Yes, investors who have participated in the share capital of the company by means of preferred equity, can redeem their preferred shares at the end of the redemption period. The conditions of issue will need to specify the redemption at the time of issuance of the preferred shares. Such redemption can only be paid back out of-(i) the amount available as distributable profits, or (ii) amount collected in the redemption account through fresh issue of securities.

**5. Is buy-back of shares permitted?**

Yes, but subject to satisfying legal and financial criteria.

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

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

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

## CHAPTER 10

## DISPUTE RESOLUTION AND GOVERNING LAW

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

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

**2. What is the court system in Nepal?**

- a. The Constitution of Nepal provides for three tiers of courts in Nepal (a) Supreme Court, (b) High Court, and (c) District Court. There are currently seven (7) High Courts and Seventy Seven (77) District Courts such that each province has one High Court and each district has one District Court.
- b. The District Court acts primarily as the court of first instance. It also hears habeas corpus petition and injunctive petitions within its territorial jurisdiction.
- c. The High Court hears appeals against the order or final judgment given by the District Court within its territorial jurisdiction. The High Court also acts as the court of first instance on certain matters. For example, the Commercial Bench formed in the High Court tries certain matters under the Companies Act, 2006 (2063), Insolvency Act, 2006 (2063), Secured Transaction Act, 2006 (2063) etc. as court of first instance.
- d. The Supreme Court is the apex/highest court in Nepal which is also the court of record. The High Court and Supreme Court also hear writs of habeas corpus, mandamus, certiorari, prohibition, and injunction and quo warranto.
- e. There are specialized courts, judicial bodies and tribunals to try specific types of cases in Nepal. The specialized courts include (a) Special Court, (b) Administrative Court, (c) Revenue Tribunal, (d) Labour Court, etc. There are certain other quasi-judicial bodies that also exercise judicial powers in Nepal. Such quasi-judicial bodies include (a) District Administration Office (DAO), (b) Land Revenue Office (LRO), (c) Department of Industry, (d) Beema Samiti (Insurance Board) etc.
- f. Generally, it takes 6 months to 1 (one) year to settle any dispute in the District Court, 1 (one) to 1.5 (one and half) years in the High Court and two (2) to four (4) years in the Supreme Court.

**3. What is the Appeal Mechanism in Nepal?**

- a. Generally, the district court being a court of first instance has the power to try and settle all the cases within the relevant district. However, it holds the power to hear appeal against the decision or final order made by certain quasi-judicial bodies within its territorial jurisdiction. High Court hears the appeal in the cases including but not limited to (a) cases tried and settled by District Court under its territorial jurisdiction, (b) the cases decided by certain quasi-judicial bodies such as Department of Industries on industrial property matter, Insurance Board on insurance claim matters within its territory.

- b. Supreme Court has the power to hear appeal in the cases including but not limited to (a) cases tried and settled by High Court as court of first instance, (b) cases in which punishment of imprisonment imposed is ten (10) years or more, (c) the decision of the lower court reversed in full or part by the High Court if it meets certain threshold of sanctions or amount in dispute and (d) other cases in which appeal can be filed before Supreme Court pursuant to the federal laws. The cases which are not subject to appeal can be appealed to the Supreme Court subject to the leave for appeal granted by the Supreme Court. The Supreme Court also reviews its own decision on certain circumstances as per the petition filed by the litigating party.

**4. Where can the case be filed?**

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

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

**For instance:**

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

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

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

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

- a. FITTA provides for the mechanism to settle disputes relating to foreign investment. Disputes arising between a foreign investor, local investor or concerned industries are required to be settled by mutual consultations in the presence of the DOI. If such disputes cannot be settled in DOI, they may be settled by arbitration in accordance with the prevailing UNCITRAL Rules. The arbitration is held in Kathmandu and the laws of Nepal apply to the arbitration. However, flexibility has been provided in terms of settlement of dispute if the investment is made in the industry having fixed capital above NPR 500 million. The foreign investment dispute relating to the investment made to such industry can be settled as provided in the foreign investment agreement.

- b. The dispute related to public procurement is settled pursuant to the Public Procurement Act, 2007. Any dispute arising between the public entity and the construction entrepreneur, supplier, service provider or consultant in connection with the procurement contract is to be settled amicably. A procurement contract may provide arbitration if the dispute cannot be settled amicably.

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

- a. The foreign arbitral award is enforced in Nepal in two conditions, viz. (a) if Nepal is party to any treaty related to enforcement of foreign arbitral award, and (b) the award is rendered in the territory of the party to that treaty subject to the conditions set out at the time of being party to that treaty.
- b. Nepal is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Award 1957 ("New York Convention"). Nepal has ratified the New York Convention with such declarations that it enforces the foreign arbitral award (a) on the basis of reciprocity and (b) given on disputes commercial in nature under the law of Nepal. The Arbitration Act sets out the conditions to be satisfied for the enforcement of foreign arbitral award in Nepal. Upon the satisfaction of such conditions the foreign arbitral award can be enforced in Nepal.
- c. The petition for enforcement of foreign arbitral award should be submitted to the High Court. The High Court can forward the foreign arbitral award to the District Court if it is enforceable.

#### **d. Indian Perspective:**

Both India and Nepal are signatory to New York Convention which obliges both the countries to recognize the foreign arbitral award on the basis of reciprocity. In context of India we understand that only 48 countries have been notified by the Central Government of India as reciprocating countries which does not include Nepal. Therefore, Nepal is not obliged to enforce the Indian arbitral award on the basis of reciprocity.

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

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

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

#### **9. How is a domestic arbitral award enforced?**

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



**10. What is the mechanism for recognition and enforcement of foreign judgment in Nepal?**

The Mutual Legal Assistance Act, 2014 (2070) (“MULA”) deals with the process and requirements of providing and obtaining legal assistance between Nepal and any other foreign country on certain legal matters including enforcement of foreign judgment. The legal assistance can be provided to a foreign country on the basis of a bilateral treaty or on the basis of reciprocity commitment from the foreign country. However, bilateral treaty is required as a condition for enforcement of foreign judgment in Nepal. There has been no such agreement or treaty entered into with any other government so far.

**11. Is there any restrictions to the recognition of foreign judgment in Nepal?**

Yes. The foreign judgment can be denied to be enforced in Nepal even if there has been treaty with the relevant country. The recognition is denied if there is

- (a) fraud on procedural matters,
- (b) any suit is filed on the matter in the court of Nepal prior to the foreign court,
- (c) no opportunity is provided for fair representation of a party,
- (d) non-compliance of regular procedure applicable to the matter,
- (e) if enforcement is against public order, etc.

## RELEVANT AGENCIES AND ORGANIZATIONS

### OFFICE OF THE PRIME MINISTER AND COUNCIL OF MINISTERS

Singhadurbar, Kathmandu  
Tel: +977-1-4211000, 4211025  
Fax: +977-1-4211065, 4211086  
Email: [info@nepal.gov.np](mailto:info@nepal.gov.np)  
Website: [www.opmcm.gov.np](http://www.opmcm.gov.np)

### MINISTRY OF INDUSTRY COMMERCE & SUPPLIES

Singhadurbar, Kathmandu  
Phone: +977-1-4211546, 4211446  
/608/298/579  
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Email: [info@moics.gov.np](mailto:info@moics.gov.np)  
Website: [www.moics.gov.np](http://www.moics.gov.np)

### MINISTRY OF FINANCE

Singhadurbar, Kathmandu  
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Website: [www.mof.gov.np](http://www.mof.gov.np)

### MINISTRY OF ENERGY, WATER RESOURCES AND IRRIGATION

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Email: [info@moen.gov.np](mailto:info@moen.gov.np)  
Website: [www.moen.gov.np](http://www.moen.gov.np)

### MINISTRY OF CULTURE, TOURISM AND CIVIL AVIATION

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