**Foreign Direct Investment**

# 1.Overview

Foreign Direct Investment (FDI) is regarded as an important source of external financing in recent years. The role of private investment remains crucial for stimulating growth and employment. It is more important in developing economies because it allows transfer of technology, skills and access to global markets, in addition to financial resources. Nepal has also been striving to increase FDI to promote domestic production.

FDI plays key role in widening the sources of financing and crowding in domestic investment in the countries like Nepal that have financing constraints. In this context, Nepal has introduced legal, institutional and regulatory reforms in recent years to attract FDI inflows. But the FDI inflow is relatively low in compared to other economies of this region. The significance of FDI has further heightened, given the declining foreign reserves position in recent years.

The stock of FDI in Nepal increased by **14.8% to NPR.227.9 billion** at the end of 2020/21. Paid-up capital is the major component in FDI stock as it accounts for **53.9%** of total FDI stock whereas the reserves and loans in total FDI stock accounts for 31.6% and 14.5% respectively.

Nepal has received foreign investment from **55 different countries** as of mid-July 2021. In terms of total FDI stock, India ranks top position with NPR 75.8 billion followed by China (NPR 33.0 billion), Ireland (NPR 16.5 billion), Singapore (NPR 15.5 billion) and Saint Kitts and Nevis (NPR 14.5 billion).

Industrial sector accounts for about 60.5% of total FDI stock. Of which, electricity, gas, steam and air conditioning sector constitutes 30.8% and manufacturing sector 29.5% of total FDI stock.

About 39.4% of total FDI stock is in service sector. Of which, financial and insurance services sector constitutes 26.9%, accommodation and food services sector 5.7%, and information and communication sector 4.8% of the total FDI stock.

The electricity, gas, steam and air conditioning sector, particularly hydropower sector, in Nepal has been a preferred sector for FDI in recent years. The latest survey shows that 30.8% of FDI stock and 40% of total paid-up capital is in this sector. Moreover, hydropower sector has also attracted other sources of external financing such as foreign loans in addition to FDI; the electricity, gas, steam and air conditioning sector accounts for 50.1% outstanding foreign loan at the end of 2020/21.

The capacity utilization of FDI based manufacturing companies stands at 64.9%, while the profitability of FDI companies remains at 14.7% in the review year.

"**Foreign investment**" means the following investment made by a foreign investor in an industry or company:

* Share investment in foreign currency,
* Re-investment in an industry of dividends derived from foreign currency or shares,
* Lease finance,
* Investment made in venture capital fund,
* Investment made in listed securities through secondary securities market,
* Investment made by purchasing shares or assets of a company incorporated in Nepal,
* Investment received through the banking channel after issuing securities in a foreign capital market by an industry or company incorporated in Nepal,
* Investment made through technology transfer,
* Investment maintained by establishing and expanding an industry in Nepal.

**Major relevant laws concerning FDI**

* Foreign Investments and Technology Transfer Act,2019, (FITTA)
* Industrial Enterprises Act,2020,
* Electricity Act,1992,
* Nepal Petroleum Act,1983
* Mines and Mineral Resources Act,1985
* Bank and Financial Institutions Act,2017,
* Companies Act,2006,
* Investment Board Act,2011,
* Foreign Exchange (Regulation) Act,2019,
* Contract Act,2000,
* Arbitration Act,1999,
* Income Tax Act,2002,
* Labor Act,2017,
* Privatization Act,1994 and many other sectorial Act

# 2.Negative List

A negative list means industry or business where FDI is restricted. The list of restricted industry or business are as follows:

* Poultry farming, fisheries, bee-keeping, fruits, vegetables, oil seeds, pulse seeds, milk industry and other sectors of primary agro-production,
* Cottage and small industries,
* Personal service business (hair cutting, tailoring, driving etc.),
* Industries manufacturing arms, ammunition, bullets and shell, gunpowder or explosives, and nuclear, biological and chemical (N.B.C.) weapons; industries producing atomic energy and radio-active materials,
* Real estate business (excluding construction industries), retail business, internal courier service, local catering service, moneychanger, remittance service,
* Travel agency, guide involved in tourism, trekking and mountaineering guide, rural tourism including homestay,
* Business of mass communication media (newspaper, radio, television and online news) and motion picture of national language,
* Management, account, engineering, legal consultancy service and language training, music training, computer training, and
* Consultancy services having foreign investment of more than fifty-one percent.

# 3.Approval Process

**\*Approving Authority**

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| **Investment Amount** | **Approving Authority** |
| Upto NPR 6 billion | Department of Industries (DOI) |
| Above NPR 6 billion | Investment Board under Investment Board Act, 2068 |

**Documents to be submitted along with application to the Approving Authority**

## **Foreign Equity Investment in a New Industry**

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| **SN** | **Documents** | **No. of copies** |
| 1 | Project Report | 3 |
| 2 | Joint Venture Agreement (JVA), in case of more than one investor | 3 |
| 3 | Citizenship certificate of local party or Certificate of Incorporation, including Memorandum of Association and Articles of Association if the local party is a company | 1 |
| 4 | Copy of passport of foreign party or Certificate of Incorporation, including Memorandum of Association and Articles of Association if the party is a company | 1 |
| 5 | Bio-data / Company profile of the foreign party | 1 |
| 6 | Financial Credibility Certificate (FCC) of the Foreign Investor provided by a home country bank or domiciled country bank | 1 |
| 7 | Authority letter from the concerned companies or individuals to carry out any necessary work on their behalf, if applicable | 1 |

## **Technology Transfer**

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| **SN** | **Documents** | **No. of copies** |
| 1 | Technology Transfer Agreement (TTA) | 3 |
| 2 | Citizenship certificate of local party or Certificate of Incorporation, including Memorandum of Association and Articles of Association, if local party is a company | 1 |
| 3 | Copy of passport of foreign party/or Certificate of Incorporation, including Memorandum of Association and Articles of Association, if the party is a company | 1 |
| 4 | Bio-data / Company profile of the foreign party | 1 |
| 5 | Industry Registration Certificate | 1 |
| 6 | Copy of the minutes of the Board of the recipient company | 1 |
| 7 | Authority letter from the concerned companies or individuals to carry out any necessary work on their behalf, if applicable | 1 |

## **Foreign Investment in an Existing Industry by Share Transfer**

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| **SN** | **Documents** | **No. of Copies** |
| 1 | Request from the share transferor | 1 |
| 2 | Request from the share transferee | 1 |
| 3 | Share Transfer Agreement | 3 |
| 4 | Copy of minutes of the Board meeting of Nepalese company regarding inclusion of foreign investor into the company | 1 |
| 5 | Copy of minutes of Board meeting, Certificate of Incorporation and company profile of the foreign party if the party is a company | 1 |
| 6 | Copy of passport and Bio-data of foreign party, if party is an individual | 1 |
| 7 | Financial Credibility Certificate of the Foreign Investor provided by a bank | 1 |
| 8 | Current Share Holders’ List as certified by the Company Registrar’s Office | 1 |
| 9 | Auditor’s Report | 1 |
| 10 | Tax clearance certificate | 1 |
| 11 | Authority letter(s) from the companies concerned to sign on behalf of the companies | 1 |

## **Loan Investment in an Existing Nepalese Industry**

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| **SN** | **Documents** | **No. of copies** |
| 1 | Loan Agreement | 3 |
| 2 | Certificate of Incorporation, including Memorandum of Association and Articles of Association of the lending agency | 1 |
| 3 | Certificate of Incorporation, including Memorandum of Association and Articles of Association of the lending agency | 1 |
| 4 | Industry Registration Certificate | 1 |
| 5 | Copy of the minute of the Board of the recipient company regarding the loan to be acquired | 1 |
| 6 | Authority letter from the concerned companies or individuals to carry out any necessary work on their behalf, if applicable | 1 |

# 4.Repatriation of Foreign Investment

* Apply to FDI approving authority or concerned body for approval of repatriation
* Approval for repatriation within 15 days, on satisfaction by the FDI approving authority.
* Apply to Foreign Exchange Facilitation Unit of NRB located at single point service centre for foreign exchange approval for repatriation
* After getting approval from NRB, repatriate the investment / earned money

 

**Documents to be submitted along with the application for repatriation:**

**A. General Documents**

* Application in the prescribed format
* Copy of the Board of Director’s resolution
* Updated Share Register from the Office of Company Registrar
* Updated Directors Register from the Office of Company Registrar
* Latest Audited Financial Statements
* Latest Tax Clearance Certificate
* Endorsement letter from NRB as a proof of Foreign investment made and recorded in NRB
* Proof of payment of required tax in the concerned tax office
* Credit Information Bureau (CIB) Report whether blacklisted or not

**B. Specific Documents**

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| Types of Repatriation | Documents |
| Repatriation on Sale of Share | * Approved Share Sale/Purchase agreement
* Approval letter of Share sale/purchase form DOI/CRO
* In case company has gone into liquidation, Tax Clearance certificate and the proof of any residual amount
* Share Valuation Report
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| Repatriation of Dividend | * Decision of the BOD and AGM for the dividend and Bonus allocation / approval
* Proof of distribution of bonus to employees as required by the Bonus Act
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| Repatriation of Loan and Interest | * Letter of approval of the loan agreement
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| Repatriation of Technology Transfer Fee /Royalty/ Lease Rental | * Approved technology transfer documents along with the calculation of the fees
* Approved TTA/ lease rent agreement
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# 5.One Window System

In order to provide in a quick and effective way the approvals, facilities and other administrative service to industries to be established under foreign investment of technology transfer agreement and in order to establish effective co-ordination among various agencies, the “department of industries” will be designated
as the one window servicing agency with the industrial promotion Board as a focal point as spelt out in the industrial Enterprises Act.

The following One-Window Committee will be formed to provide infrastructure facilities such as registration, land, electricity, water and facilities a taxation, etc.

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| Convener | Director General of the Department of Industries  |
| Member | Joint Secretary, the Ministry of Industries |
| Member | Joint Secretary, the Ministry of Finance |
| Member | Joint Secretary, the Ministry of Commerce |
| Member | The Chief Controller, Nepal Rastra Bank |

The powers relating to the facilities and services provided by agencies such as the Ministry of Finance and its
Departments, the department of Commerce, the Nepal Rastra Bank, and the Department of Immigration etc. will
be delegated to the one window committee.

# 6.Charges for Foreign Investment

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| **Services** | **Charges** |
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|  | Approval of Foreign Investment |

 | Free (Deposit Rs.20,000/-) |
| Company Registration | As per Company Act |
| Industry Registration | Free |
| Capital Currency against Foreign Investment | Free |
| Visa | Fees as per immigration Act |

# 7.Links of different websites and acts

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| **Websites/ACTS** | **Links** |
| Foreign Investment and Technology Transfer Act, 2019 | <https://www.lawcommission.gov.np/en/wp-content/uploads/2019/09/The-Foreign-Investment-and-Technology-Transfer-Act-2019-2075.pdf> |
| Industrial Enterprises Act, 2020 | <https://moics.gov.np/uploads/shares/laws/Industrial%20Enterprises%20Act%20%202020.pdf> |
| Investment Board Act,2011 | <http://www.investnepal.gov.np/portal/index.php?p1=download&f=cmVzb3VyY2VfN2ZmODFiZTkxZGZhNTQucGRmOjpJbnZlc3RtZW50IEJvYXJkIEFjdC5wZGY=> |
| Bank and Financial Institutions Act, 2017 | <https://www.nrb.org.np/lgd/bank-and-financial-institution-act-2073-2017/> |
| Foreign Exchange (Regulation) Act,2019 | <http://www.investnepal.gov.np/portal/index.php?p1=download&f=cmVzb3VyY2VfMzlmYjEwM2IwYWIyODQucGRmOjpGb3JlaWduIEV4Y2hhbmdlIChSZWd1bGF0aW9uKSBBY3QucGRm#:~:text=called%20as%20the%20%E2%80%9CForeign%20Exchange,%2C%202019%20(1962).%22&text=operating%20in%20any%20place%20outside%20of%20Nepal.&text=(3)%20This%20Section%20shall%20commence,Notification%20in%20the%20Nepal%20Gazette.> |
| Income Tax Act,2002 | <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/income-tax-act-alongwith-each-year-financial-acts-amendment-2058-2002.pdf> |
| Labor Act,2017 | <https://lawcommission.gov.np/en/wp-content/uploads/2021/03/The-Labor-Act-2017-2074.pdf> |
| Office Of The Company Registrar | <https://www.ocr.gov.np/> |
| Ministry Of Foreign Affairs | <https://mofa.gov.np/about-nepal/investment-in-nepal/> |
| Nepal Rastra Bank | <https://www.nrb.org.np/lgd/bank-and-financial-institution-act-2073-2017/> |