



Overview of Foreign Investment & Technology Transfer Act (FITTA) 2075 (2019) Nepal



Introduction

The Foreign Investment & Technology Transfer Act (FITTA),2075 (2019)is enacted after president's assent on 27 March 2019 and replaced the old Foreign Investment and Technology Transfer Act, 1992. The FITTA intends to increase the industrialization and foreign investment for the long term and sustainable growth in national economy by utilizing the available resources and also by reforming the existing legal framework of foreign investment in Nepal to attract more foreign investments.The new act has included other forms of foreign investment; in addition to the earlier provision of investment and re-investment in shares and Technology Transfer; such as Incorporating a Branch Office, Lease Financing, Investment in secondary stock market, Investment in equity through Venture Capital Fund and investment by issue of securities in foreign stock markets.vv

The Major Highlights of new FITTA is given below:

“Foreign Investment” (Section 2(j)):

Foreign investment is allowed in industrial sector which has been classified as “Industry” under Industrial Enterprises Act, 2073 (2016) and includes the

- Investment in sharesin foreign currency
- Re-investment of dividend/Profits
- Investment through lease of airlines, ships, machineries and equipment (Read with section 6)
- Investment in Equity through “Venture Capital Funds”by “Corporate Foreign Investor” (Read with section 9)
- Investment in secondary stock market (Read with section 10)(*Not effective until further notification from Government*)
- Investment through purchase of shares or asset (Read with section 5)
- Investment by issue of securities in foreign stock markets (Read with section 11)(*Not effective until further notification from Government*)
- Technology transfer * (Read with section 7)
- Incorporating Branch Unit (Read with section 8)(Subject to FITTA Regulationsyet to be published)

The foreign investors can make Foreign Investment individually or jointly with other foreign or Nepali person/entity.

*Technology Transfer includes: Licensing of foreign intellectual properties like Patent, Design, Trademark, Goodwill, Formula, Process, User License, Technical Knowhow, Franchise and it also includes Foreign Technical Consultancy Services, Management Services.

The FITTA also provides for “automatic approval” and “Single Point (One Window) Service Center” which are not effective yet until further notifications from the government.

“Foreign Investors” are the following persons (Section 2(k)):

Foreign Investors are the foreign person, firm, company, non-resident Nepali or foreign Government or International Organization or similar corporate entity and in case the investor is foreign corporate investor the ultimate beneficial owners of such entity, which has invested in Nepal. The new act has included the Non-resident Nepali and foreign beneficial owners/parent company as foreign investors.

Borrowings from Foreign Financial Institutions (Section 12):

Industries with foreign investment can borrow by entering into Loan Agreement for project loan or project financing from foreign banks and financial institutions after obtaining approval from Nepal Rastra Bank(NRB) and pre-recommendation from concerned Ministry under the prevalent laws.

As the FITTA does not provide anything about loan from Parent Company or other private institution, we are of the view that the loan from parent company or other private institution is allowed by entering into Loan agreement and obtaining approval from NRB under Foreign Exchange Regulation Act (FERA), no any approval from the approving authority under FITTA is required. Currently, NRB has imposed interest rate cap of One Year Libor + 5.5% on foreign borrowing and other requirements to evidence that borrowing was not possible from local banks and financial institutions.

“Foreign Investment” (Section 2(j)):

The procedure for obtaining foreign Investment (FDI) approval is as follows:

- The Foreign Investor is required to submit application in the prescribed format along with investment time schedule and Project Report and other relevant documents to the approving authority
- The approving authority shall provide the approval within 7 days if all the required documents and information are available with the application
- No further approval is required for re-investment of the profits earned from an already approved industry in the same or other industry, other than the industry not opened for Foreign Investment.

The following registrations, consents and approvals will be required after foreign investment approval prior to commencement of business:

- Company registration under Companies Act;
- Tax registration under Income Tax Act and Value Added Tax Act;
- Industry registration under Industrial Enterprises Act;
- Approval from NRB for inward Remittances (Sec 16);
- Environmental approvals (if applicable); and
- Specific sectoral business licenses, such as Telecom, Banking, VCF, Electricity, Insurance, etc. (if applicable).
- Business registration with local authority.

Intimation of Inward Remittance to NRB (Section 16):

After obtaining approval from the approving authority, the foreign investor is required to intimate NRB with self-declaration that the foreign investment fund being injected into Nepal is made from legally earned sources. The foreign investment can be brought into Nepal through proper banking channel after complying the procedures prescribed by NRB in convertible currency (except for Indian Investor which can be brought in Indian Currency).

Approving Authority for FDI (Section 17):

The FITTA requires that foreign investment and technology transfer should be approved by the approving authority according to the investment amount which is as follows:

- Department of Industry (“DOI”) shall approve the foreign investments for upto NPR 6 billion (upto USD 53 Million approx).
- Investment Board of Nepal (“IBN”) shall approve the foreign investments above NPR 6 billion (above USD 53 Million approx).

Section 15(2) of the FITTA specifies that the approval will be provided within 7 days once the complete documents are submitted along with application for FDI.

Section 16(2) of the FITTA stipulates that after fulfilling the procedures of Nepal Rastra Bank, FDI can be brought in convertible foreign currencies through approved banking channel. Whereas Indian Investors can bring FDI in Indian Currency. But under section 16 (2), before bringing the FDI amount, Investor must notify to the Nepal Rastra Bank through self-declaration that that the source of FDI amount is from valid & legal sources.

Timeline for Investment (Section 18):

Timeline for investment will be specified in the regulations. Approval will be repealed if the investment is not undertaken within the stipulated time.

The following registrations, consents and approvals will be required after foreign investment approval prior to commencement of business:

- The investor does not start bringing in the investment amount without reasonable cause within 2 years from the date of approval;
- The shares of the investment are transferred to Nepalese investor; and
- Revocation of industry registration or dissolution of the company.

Notification to Approving Authority in case Share Transfer or Sales (Section 19):

Investors have the obligations to notify the DOI/IBN within 30 days from the date of sale or transfer of assets, property, shares or any other financial instruments or change in control, or change in holding pattern of the company either in Nepal or outside Nepal.

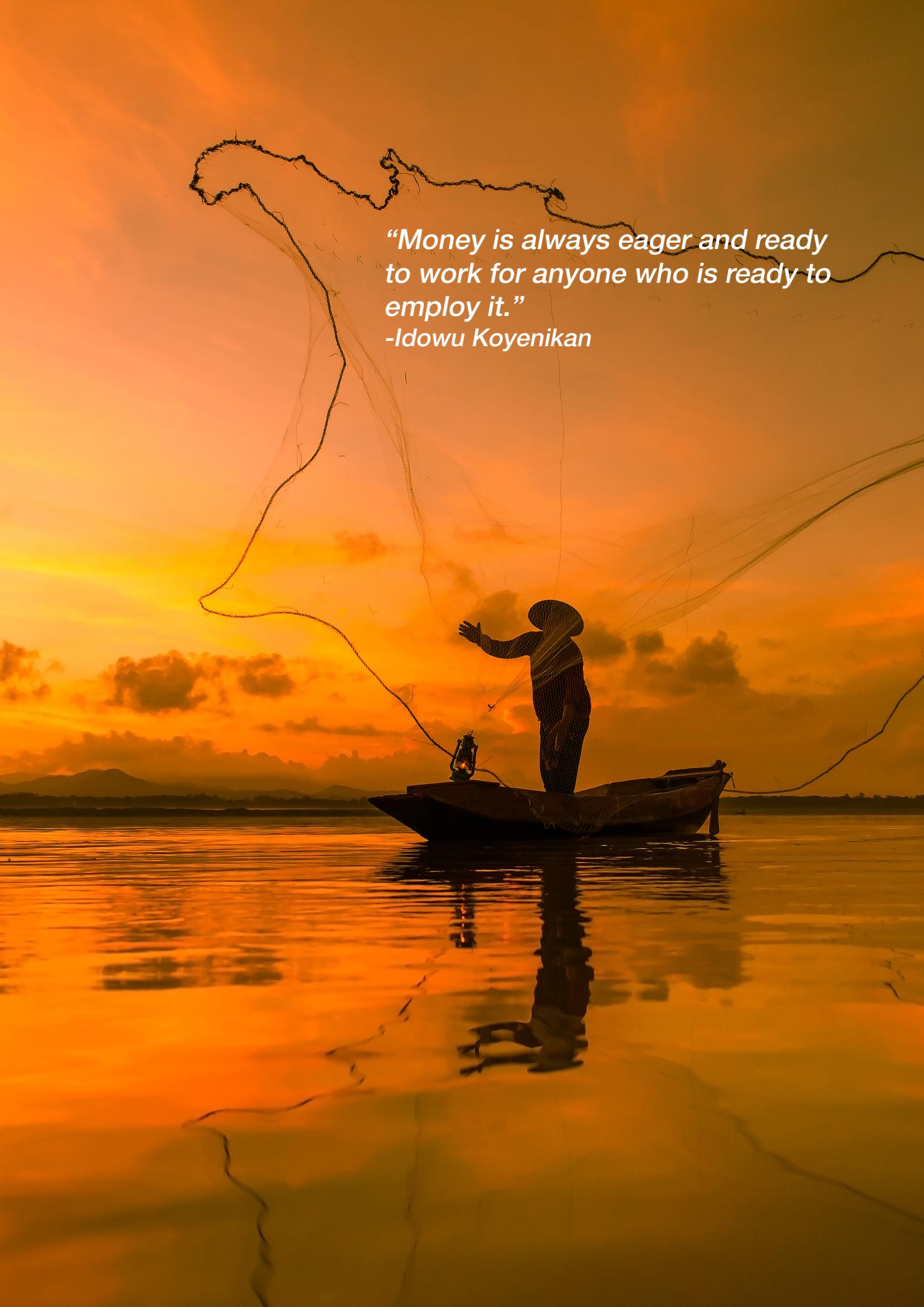
Likewise, Entity or Branch Unit of Industries have the obligations to notify the DOI/IBN within 30 days from the date of change in control of Company by way of sale or transfer of assets or underlying assets, property, shares or any other financial instruments of its Parent/Holding Company (Outside Nepal).

Repatriation of Profit or Gains on Sale of Shares (Section 20):

The FITTA allows investors to repatriate dividends or profits or earnings, proceeds of sale of shares (net of all tax liabilities as per prevailing laws). Also, proceeds from liquidation (after payment of all liabilities) and amounts recovered from legal proceedings/arbitrations are also allowed to be repatriated. These were allowed but not clear in the earlier law. Apart from that, Royalty as per technology transfer agreement and lease rent from lease financing, any other amount which can be repatriated legally can also be repatriated.

Provided that the royalty or fee shall not be more than 5% of Gross Sales in case liquor industries obtains technology transfer by using TRADEMARK. But, this ceiling is not applicable to those liquor industries exporting 100%.

Approval is required from the approving authority and the Nepal Rastra Bank for each repatriation. Approving authority shall provide approval within 15 days from the date of application after carefully checking of the application.

A photograph of a fisherman in a small wooden boat at sunset. The fisherman is silhouetted against the bright orange and yellow sky, standing and throwing a large fishing net that extends across the frame. The boat is on a calm body of water, and the reflection of the fisherman and the net is clearly visible on the surface. The background shows a range of mountains under the setting sun.

*"Money is always eager and ready
to work for anyone who is ready to
employ it."*

-Idowu Koyenikan

Service to be Availed from Single Point Service Centre (Section 23):

The following services shall be provided to the foreign investors under this Act:

- Industry Registration & its related services .
- Foreign Investment and loan approval .
- Company registration & its related services .
- Labour permission (Work Permit) .
- Visa Facility .
- Environment Impact Assessment (EIA) Approval
- Focal Point for energy & infrastructure development
- Provide Permanent Account Number (PAN)
- Quality Measurement and control of products of the industry
- Concession/rebate for the Industries
- Approval for Foreign Exchange
- Any other services required under this act.

Concession, facilities and incentives available to the Foreign Investors or Companies established under FDI:

The following services shall be provided to the foreign investors under this Act:

- In addition to all facilities, concessions and incentives or protection under FITTA, the companies are allowed the facilities provided under Industrial Enterprises Act, 2017 except facility of sick industry (Sec 24).
- Subject to the provisions of prevailing laws, the Industry is allowed to open bank account in Foreign Currency (Sec 25).
- The industry is also allowed to use the Derivative instrument to mitigate the risk of foreign currency exchange rate (Sec 25).
- As per the prevailing laws, the duly appointed highly skilled technician, expert and managerial staff can repatriate the savings of their salary after payment of applicable tax to their home country (Sec 27).
- Industries shall be provided Industrial security at par with Nepalese Industries (Sec 28)
- Visa facility as per sec 30.
- The approving authority shall make necessary arrangement for recommendation, co-ordination and facilitation for obtaining the required land if such industry applies for the same. The authority shall also arrange for recommendation, coordination and facilitation for exemption of the land ceiling limit.
- Provide National Treatment to the industry under FDI such as management, maintenance, use, transfer or sale of the investment in Nepal except the following areas (Sec 32):
 - Compulsory licensing of right to use of Intellectual property as agreed with WTO
 - Any rebate or concession provided under Public Procurement Act to any local industry of merchandise
 - Any grant or facility of Nepal Government
 - Non-trading service provided by Nepal Government
 - Financial services deemed necessary by Nepal Government for protection of interest of investors, insurance policy holders, participants of security market, etc.
 - Provide special treatment as per the regional or multilateral financial or monetary agreement to which Nepal Government is a party to do so
 - Conditions imposed by regulators on repatriation of investment, loans, service fee, etc as per the prevailing laws.
 - Matters relating to public health, flora and fauna or environment protection.
- No nationalization of industry established under Foreign Investment (Sec 33)
- In case of any amendment in the Foreign Investment Act which adversely affects the industry already established before such amendment under foreign investment Act, then the said amendment shall not be applicable to such industries (Sec 34).

Provisions for Visas (Section 30):

Non-tourist Visa: Is allowed up to 6 months to the foreign national for conducting study, research and survey for foreign investment and for the period as per the industry requirements to high-skilled specialist, technical or managerial personnel after evidencing that equivalent workers are not available in Nepal after undergoing a vacancy procedure as per the prevailing laws.

Business visa: Is allowed up to the period of foreign investment to the investor and his/her family member or 1 authorized representative of the investor and his/her family member. Maximum of 2 person and their family members can obtain business visas if the investor is a company.

Residential Visa: Is allowed up to the period of foreign investment to foreign investors who invest USD 1 Million at a time or its equivalent to the investor or its authorized representative and his dependent family members.

Provisions relating to Contract Manufacturing (Section 45):

Industry with foreign investment is allowed to get the contract manufacturing done from third party for component or part of the main product only. They are not allowed contract manufacturing of its main product.

Sectors Restricted for Foreign Investment in Nepal (Related to Section 3 (2)) :

The sectors restricted for investment are:

- Primary agriculture sectors such as fish farming, animal husbandry, horticulture, Dairy business and others;
- Small and cottage enterprise;
- Personal service business such as tailoring, driving, barber shop; Labour permission (Work Permit) .
- Arms and ammunition industry;
- Buying and selling of land and houses (other than construction industry);
- Retail business;
- Remittance service;
- Local catering, travel agency, trekking agency, homestay and rural tourism;
- Mass-media business such as newspapers, radio, TV and online news;
- Movies of national language;
- Management, accounts, engineering and legal consulting services, language training, music training, computer training;
- Other consulting services over 51% shareholding.

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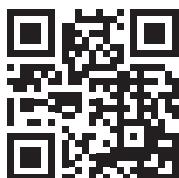
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About B.K. Agrawal & Co.

B.K. Agrawal is committed to impeccable quality service, highly integrated service delivery processes and a common set of core values that guide our decisions daily.

Our firm is well-established as a leader in its national business community and is staffed by nationals, thereby providing a knowledge of local laws and tax regulations which is important to clients undertaking new ventures or expanding into other countries.

Crowe Global is known for its impeccable professional service to privately and publicly held businesses in all sectors and has built a local and international reputation in the areas of Audit, Tax, Advisory and Risk.

Our Global Reach

In addition to our local and regional services, as a member of Crowe Global, we can draw on a worldwide network of independent professionals and their know-how. The Crowe Global network consists of more than 200 independent accounting and advisory services firms in over 130 countries around the world.

As a member firm of Crowe Global we offer comprehensive, international expertise in a broad range of business consulting practices, including assurance, benefit plan services, corporate finance, risk consulting, forensic services, performance services, tax consulting, and technology.

This unique combination of our local and regional talent coupled with the global reach of our network provides us with the local expertise and global worldwide capabilities our clients expect and deserve.

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