

Foreign Investment and Technology Transfer Rules 2077 (2021)

Introduction

The Government of Nepal (“GON”), exercising its powers under Section 51 of the Foreign Investment and Technology Transfer Act 2019 (2075) has brought into effect the Foreign Investment and Technology Transfer Rules 2021 (2077) (“FITTR”) vide publication in the National Gazette dated January 11, 2021 (*Pausb* 27, 2077). FITTR came into effect immediately upon publication.

This Briefing aims to highlight major provision of FITTR.

Royalties and Fees for Technology Transfer

FITTR prescribes following limits on royalties and fees under any technology transfer agreement:

- Limits on Royalties or other fees for all types of technology transfer:

Royalty	Quantities Sold in Nepal	Quantities Exported outside of Nepal
Determined on the basis of ‘gross sales’ price	Up to 5% of ‘gross sales’ price excluding taxes	Up to 10 % of ‘gross sales’ price excluding taxes
Determined on the basis of ‘net profit’	Up to 15% of ‘net profit’	Up to 20% of ‘net profit’

- Limits on Royalties or other fees for usage of trademarks only:

Quantities Sold in Nepal	Quantities exported outside of Nepal
For Tobacco and Liquor industries, up to 2% of ‘gross sales’ price excluding taxes	For Tobacco and Liquor industries, up to 5% of ‘gross sales’ price excluding taxes
For other industries, up to 3% of ‘gross sales’ price excluding taxes	For other industries, up to 6% of ‘gross sales’ prices excluding taxes

Limits on royalties and fees are applicable on the aggregate of all fees and royalties charged in a technology transfer arrangement and are applicable regardless of the number of agreements entered between the foreign party and the local party.

However, limits on royalties and fees shall not be applicable in case of fees determined by parties for the purpose of bringing an industry into operation, i.e., pre-operating fees.

Time Period for Bringing in the Investment

FITTR mandates following percentage of investment to be brought within one year of approval:

Investment Amount	% to be brought in
Minimum investment (NPR 50 million)	25%
Up to NPR 250 million	15%
Up to NPR 1 billion	10%
Exceeding NPR 1 billion	5%

Notwithstanding the above-mentioned timeline:

- all industries must bring in 70% of the investment prior to commercial operation and remaining 30% within two years following the commercial operation date
- in case of equity investment into an existing industry through share purchase, the total investment amount must be brought within one year of investment approval

Any prior approved investment yet to be brought in shall be regularized through investment action plan within six months from enactment of FITTR.

Notification of Transfer of Shares or Interest

In case of sale or transfer or change in ownership or vested ownership over any assets or shares or any financial instrument generated in Nepal from foreign investment, the concerned company must record the

change by filing an application at foreign investment approving body along with following details:

- (i) A copy of relevant agreement and certified document evidencing such transaction;
- (ii) Document disclosing the per unit price of the share of the company certified by its auditors and audit report;
- (iii) Timeline for repatriation of investment from such sale or transfer of shares (if applicable);
- (iv) Document evidencing the payment of all taxes required to be paid to the GON; and
- (v) Updated share capital of the local company.

This provision shall be applicable for a foreign holding company transferring its shares or interest from its Nepali subsidiary.

Documentary Requirements for Repatriation of Earnings from Investment

Foreign investor wishing to repatriate its investment or profit accrued from such investment must file an application at the foreign investment approving body along with following documents:

- (i) Resolution of general meeting and Board of Directors of the local company;
- (ii) Certified and updated share capital and directors' registry of the local company;
- (iii) Audit report and tax clearance certificate for the preceding fiscal year;
- (iv) Evidence of investment having been made as per prevailing law;
- (v) Letter of approval for sale of such shares and a copy of share purchase agreement (if applicable);
- (vi) In case of repatriation of profit or dividend, copy of evidence of distribution of bonus in accordance with the prevailing laws and audit report of the concerned fiscal year;

- (vii) In case of payment pursuant to litigation, arbitration or any other legal proceeding, documents regarding the same;
- (viii) In case of royalty, document relating to the same;
- (ix) Record evidencing the sale or transfer of property in Nepal (if applicable); and
- (x) Any other documents required by foreign investment approving body.

Visa Facility

Visa facility shall be provided to a foreign investor or his authorized representative and their families based on the investment amount, as follows:

- Business visa - for the time period till which the minimum investment amount is kept in Nepal;
- Business visa - if the proposed investment equals NPR 100 million or more and 25% of the investment amount has been brought in; or
- Residential visa - if USD 1 million or more is invested all at once then till the time 50% of the investment is maintained in Nepal.

Others

- Assistance may be provided for acquisition or purchase of land by energy, manufacturing, infrastructure or mining industries.
- Industry may open retail sales outlet within its industrial complex upon obtaining required approval.
- Re-investment of profits generated from foreign investment may be made into the same industry or to other industries open for foreign investment provided the re-investment amount is not less than 10% of the investment threshold if it is the same industry and not less than the investment threshold in case of other industries.

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