

THIRD AMENDMENTS TO FOREIGN INVESTMENT AND FOREIGN DEBT MANAGEMENT BY-LAWS, 2078

Introduction

On February 9, 2024, Nepal Rastra Bank (“NRB”), the regulatory authority overseeing banks and financial institutions in Nepal, made amendments to the Foreign Investment and Foreign Debt Management By-laws, 2078 ("By-laws"). The purpose of this Briefing is to highlight significant amendments in the By-laws and is not an exhaustive account of all the changes. The By-laws and this Briefing should be referred to alongside the Foreign Investment and Technology Transfer Act, 2075 (2019 A.D.) ("FITTA") and the Foreign Exchange Regulation Act, 2019 (1962 A.D.) ("FERA") and related regulations.

Notable Changes to the Bylaws.

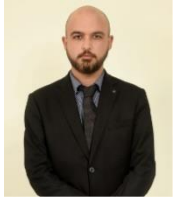
Provision	Topic	Amendment
4	Obtaining Approval for Time Extension from the regulatory authority	<p>A new provision has been added whereby in the event that a foreign entity fails to bring in foreign investment within the period stipulated under FITTA, the approval of extension of time from the approving body shall also be presented to NRB.</p> <p>A proviso to sub-section (3) has been added to incorporate that NRB approval shall not be required in the following instances of changes in shareholding:</p> <ul style="list-style-type: none"> • Foreign investment that does not reduce shareholding ratio of Nepali shareholders. • Foreign investment made in a company listed in the stock market. • Industries deemed as sick under the Industrial Enterprises Act, 2076 (2020 A.D.).
5	Recordal of Foreign Investment	<p>Subsection (6) has been added to incorporate that the amount exceeding the approved foreign investment due to fluctuations in the exchange rate need not be repatriated and may be recorded as foreign investment as approval under prevailing laws.</p> <p>Subsection (7) has been added to incorporate that the amount exceeding the approved foreign investment can also be brought in and recorded as foreign investment upon obtaining approval from the approving agency as per prevailing laws.</p>
12	Reporting to NRB	A provision has been added whereby in addition to banks and financial institutions reporting foreign currency transactions, industries attracting foreign investment and borrowers obtaining foreign loans must also provide relevant details to NRB.

Schedule 2	Application informing NRB before remitting foreign investment in Nepal	<p>Following new requirements have been added:</p> <ul style="list-style-type: none"> • Foreign investment approved date to be mentioned. • Copy of approval of foreign investment from foreign investment approving entity to be enclosed.
Schedule 4	Application to obtain prior approval from NRB for sending or receiving foreign currency for investment in Nepal after change in share ownership	<p>With regards to the sale of shares of a company not listed in the stock market, the fair market value must be determined by providing a specific value or a range, with the upper limit not exceeding 10 percent of the lower end price. This valuation must be conducted by an accountant authorized by the Institute of Chartered Accountants of Nepal, or alternatively, a certified copy of a share valuation report issued by an investment banking institution authorized by the Securities Board of Nepal.</p> <p>If the remitter is not an approved investor the following additional documents prescribed in Schedule 3 (ii)(c) should also be presented:</p> <ul style="list-style-type: none"> • Certified copy of their passport or certified copy of organization registration certificate. • Attested copy of documents related to the source of investment. • Certified copy of the document opening the relationship with the foreign investor. • Compliance with regulations regarding money laundering, terrorism, and other applicable national and international laws, with a self-declaration of adherence. • Opening of such transactions by both senders and receivers, along with relevant decisions of the Board of Directors or authorized officers, and certified copies of contracts. • Proof of document revealing the identity of the real owner for remittance institutions. <p>When profits generated from foreign investment are reinvested in the same industry or other industries (not restricted for foreign investment), a copy of foreign investment approval is not required.</p>
Schedule 5	Certificate to be issued by the respective bank or financial institution after foreign currency has been brought in	The name of country from which the currency has been brought in should also be mentioned.
Schedule 6	Documents to present for recordal of foreign investment	<p>Various charges deducted during remittance of foreign investment such as SWIFT charges, bank commissions, and service fees may be included into the total foreign investment amount upon presentation of relevant documents. However, fees exceeding three percent of the net investment amount cannot be recorded as foreign investment.</p> <p>If the remitter is not an approved investor, then it shall provide documents as prescribed in Schedule 3 (ii) (c).</p> <p>If profits generated from foreign investment are reinvested in the same industry or other industries (not restricted for foreign investment) copies of foreign investment approval, certificates and system</p>

		generated evidence issued by relevant banks regarding foreign currency entry for investment, and approval from NRB or proof of prior notification as per regulations, are not required. Foreign investment causing alternation of share ownership shall require approval from NRB as per Section 4(3) of the Bylaws.
Schedule 7a	Documents to be presented for approval and recordal of foreign investment.	Proof or bank statements of System Generated (SWIFT Messages etc.) need not be presented in case of foreign investment brought before enforcement of FITTA.
Schedule 7b	Application to be presented to the Foreign Exchange Facilitation Unit for approval and recordal of foreign investment.	Country from which the funds has been brought in should also be mentioned.
Schedule 8	Certificate for recordal of foreign investment	When profits generated from foreign investment are reinvested in the same industry or other industries (not restricted for foreign investment), a recordal certificate stating the same shall be provided.
Schedule 9	Documents to be presented for approval of foreign currency exchange to repatriate foreign investment/ amount earned.	If fair market value of shares is determined by an auditor, the same auditor must be authorized by ICAN. Proof of payment of advance income tax, value-added tax, capital gains tax, and other applicable taxes as per prevailing laws should be presented.
Schedule 9(a)	Documents to be presented for repatriation of amount earned/ invested in branch office to seek approval of foreign currency exchange.	If fair market value of shares is determined by an auditor, the same auditor must be authorized by ICAN. Proof of payment of advance income tax, value-added tax, capital gains tax, and other applicable taxes as per prevailing laws should be presented.
Schedule 10	Provisions concerning foreign loan	Foreign lenders include Development Finance Institutions under Government or Intergovernmental ownership Local lenders borrowing from parent company shall not include banks and financial institutions Other conditions: <ul style="list-style-type: none"> With regards to specific types of loans provided to companies, or local banking institutions by foreign banking institutions wherein the stipulated contingent expenses, fees, and interest rates concerning penalty interest, advance payment and commitment fees are outlined in the loan agreement, the approval of NRB or the limitations on interest rates are not

		<p>mandatory in course of payment of such contingent fees to the investor.</p> <ul style="list-style-type: none"> • Foreign loans may be repaid to third party in case of loans from foreign banking institutions to local banks if the same is prescribed in the loan agreement. • Foreign loan may be converted into equity provided the same is mentioned in the loan agreement and approval is obtained from NRB. • Local “A” class banks may issue loans locally based on security in the form of financial guarantee issued by a foreign bank and if the financial guarantee is executed and later is to be refunded from Nepal, approval of NRB shall be obtained.
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