

DOING BUSINESS IN NEPAL

This article aims to give a quick overview of the provisions of Nepal applicable to the foreign person and entities interested for doing business in Nepal. The details of relevant legislation are not incorporated. We recommend for taking specific professional guidance before taking any action on this:

Prior to making equity investment in Nepal or embarking upon the technology transfer agreements with a Nepalese company, foreign investor/s will have to obtain the approval for the same from the Department of Industries (DOI). However, for equity investor/s in a new venture, the foreign investor/s will have to perform following additional activities as well:

- Incorporate the company at the Company Registrar's Office
- Register the industry at Department of Industries (DOI)
- Registration at Inland Revenue Office to get Permanent Account Number (PAN)
- Others, if applicable (such as Trademarks/design/patents)

The procedures that are to be followed for seeking approval for foreign investment and technology transfer, company registration, industry registration, tax registrations and other post investment procedures are as per below:

1. Procedures for Foreign Investment and Technology Transfer

"Foreign Investment" means the following investment made by a foreign investor in any industry"

- (1) Investment in Share (Equity)
- (2) Reinvestment of the earnings derived from the investment in equity share
- (3) Investment made in the form of loan or loan facilities.

"Technology Transfer" means any transfer of technology to be made under an agreement between an industry and a foreign investor on the following matters:

- (1) Use of any technological right, specialization, formula, process, patent or technical know-how of foreign origin.
- (2) Use of any trademark of foreign ownership.
- (3) Acquiring any foreign technical, consultancy, management and marketing service.

"Foreign Investor" means any foreign individual, firm, company or corporate body involved in foreign investment or technology transfer including foreign government or international agency.

"Department" means the Department of Industries or Department of cottage and Small Industries of Government of Nepal or any other department office or agency as specified by Government of Nepal.

Permission to be Obtained

(1) Permission of the Department shall be required to be obtained for foreign investment or technology transfer.

(2) A person desiring to avail the foreign investment or technology transfer shall be required to make an application to the Department in the prescribed form along with the prescribed particulars for obtaining permission in that behalf.

(3) If an application is made as per above, the Department shall, in the case of an industry with fixed assets up to five hundred million rupees, itself, and in the case of an industry with fixed assets in excess thereof, in accordance with the decision of the Board, grant permission within thirty days from the date of application.

(4) No permission shall be granted for making foreign investment in the following industries:

1. Cottage Industries.
2. Personal Service Business (Business such as Hair Cutting, Beauty Parlour, Tailoring, Driving Training etc.)
3. Arms and Ammunition Industries.
4. Explosives, Gunpowder
5. Industries related to Radio-Active Materials.
6. Real Estate Business (Excluding Construction Industries)
7. Motion Pictures Business
8. Security Printing
9. Currencies and Coinage Business

Provided that permission may be granted for the transfer of technology in such industries.

Facilities and Concessions

1. A foreign investor making investment in foreign currency shall be entitled to repatriate the following amount outside Nepal:-
 - a) The amount received by the sale of the share of foreign investment as a whole or any part thereof.
 - b) The amount received as profit or divided in lieu of the foreign investment.
 - c) The amount received as the payment of the principal of and interest on any foreign loan.
2. A foreign investor shall be entitled to repatriate outside Nepal the amount received under an agreement for the transfer of technology in such currency as set forth in the concerned agreement.

Provisions Relating to Visa

1. A foreign national visiting Nepal in connection with undertaking any study or carrying out any research with the objective of making investment in Nepal shall be provided a non-tourist visa for up to six months.
2. A foreign investor or dependent family or authorized representative of such a foreign investor and dependent family of such authorized representative shall for the purpose of stay in Nepal be provided a business visa until the foreign investment is retained.
Provided that a foreign investor who, at a time, makes investment in an amount no less than one hundred thousand United States dollar or in convertible foreign currency equivalent thereto, and his/her dependent family shall be granted a residential visa until such investment is retained.

Settlement of Disputes

1. If any dispute arises between a foreign investor, national investor or the concerned industry, the concerned parties shall be required to settle the dispute by mutual consultations in the presence of the department.
2. If the dispute could not be settled in the manner as referred to in Sub-section (1) it shall be settled by arbitration in accordance with the prevailing arbitration Rules of the United Nations commission on International Trade Law (UNCITRAL).
3. The arbitration shall be held in Kathmandu. The laws of Nepal shall be applicable in the arbitration.
4. Disputes arising in regard to foreign investment made in the industries with investment as prescribed may be settled as mentioned in the foreign investment agreement.

2. Companies Registration

Foreign Investment can be made by setting either a private limited company or a public limited company. The incorporation/registration of the company is done by Company Registrar's Office (CRO). The

companies are incorporated and registered under the provisions of the Company Act, 2006 as amended from time to time. The Company Act, 2006 has a provision for three types of companies, namely, Private, Public and Non Profit Distributing.

"Private Limited Company" means a company which by its articles,

- a) Limits the number of its shareholders from to 50
- b) Prohibits any invitation to the public to subscribe for shares

"Public Limited Company" means a company that:

- a) Has the minimum number of 7 shareholders (and there is no maximum limit)
- b) Offers shares and debentures to the public through issue of prospectus which complies with the requirements of the Companies Act 2006 and Securities Act.
- c) A company can be formed as a public company or alternatively, a company which is incorporated as a private company can also be converted into a public company after fulfilling the requirements of companies Act 2006.

The private and public companies are prohibited to organize proprietorship or partnership firms. The par value of share should be NRs. 100 per share for both the private and public companies.

Registration Procedure

1. Foreign companies in order to conduct business in Nepal shall register the branch office with the Companies' Registrar Office (CRO) or establish liaison office in Nepal. However the activities of making investment in shares of any company, lending moneys to such company or participating in the operation or management of such company, shall not be deemed to be the transactions carried in Nepal:

2. An application accompanied by the permission of the concerned body, if required and the prescribed fees shall be submitted to the CRO for registration of such company and the office after making necessary inquiry shall give the registration certificate, no later than thirty days after the making of the application.

3. Where a foreign company cannot be registered the Office shall give information thereof, setting out the reasons for the same, to the concerned applicant within thirty days.

4. A foreign company registered in Nepal may open its branch office and carry on the concerned business or transactions or open its liaison office in the Nepal.

However, a foreign company registered as a liaison office shall not be entitled to do any income earning activity in Nepal.

5. If the name and object clause of the company is such that it cannot be registered the CRO may not register such company and the company registered pursuant to this legislation should carry only the same

type of business or transaction as is being carried on by it in the country where its registered office is situated or it has been incorporated.

6. Such foreign companies shall not issue shares or debentures within the Nepal.

7. Foreign companies registered within Nepal as per the Nepalese Companies Act shall comply with all other provisions prescribed by the act to be followed by such companies.

Submission of documents

A foreign company shall submit to the Office certified copy of the following documents as prescribed along with the application for registration. Where any amendment is made in the documents submitted, notice thereof shall be given to the Office no later than thirty-five days.

(a) Permission obtained by the foreign company from the competent authority to carry on its business or transaction in Nepal;

(b) Copies of the charter, certificate of incorporation, memorandum of association, articles of association of the company, and Nepalese translation thereof;

(c) Full name, address of the registered office and principal place of business of the company, date of incorporation of the company, description of the paid up capital and major objectives of such company;

(d) Names, addresses of directors, manager, company secretaries or main officers of the company and description of their citizenship;

(e) Name and address of the person residing or staying in the Nepal, who is authorized by the company to receive, on its behalf, any summons, notice etc.

Issued in the name of the company;

(f) Full address of the principal place where the company carries on its transaction or business in Nepal and of the office of the company situated in that place;

(g) Where the company is to carry on any transaction or business in the State of Nepal, details of the proposed investment and transaction;

(h) Where the company is to commence its transaction in Nepal, the proposed date thereof;

(i) A declaration made by a director of the company or his/her representative, on behalf of the company, that the matters contained in the returns submitted by the company are true and correct;

(j) Power of attorney.

Books of account, audit and annual report

Every foreign company registered in Nepal shall prepare annual financial statements, get it audited and submit the same to the Office including the no later than six months after the expiration of a financial year as if such company were a company incorporated under this Act.

Power of attorney

A foreign company in accordance with the legal requirements of the country where the company has been incorporated or registered office is located Shall appoint a person residing in Nepal as its authorized representative for the purposes of the service of any summons or notice or authorizing such person to receive any other lawful notices on a lawsuit or legal action instituted on behalf or legal against the company.

Cancellation of registration and liquidation Procedures

If a foreign company wishes to close down the transaction which it is carrying on in Nepal and get its registration canceled or where the competent authority, acting in accordance with the prevailing law, prohibits such company from carrying on the transaction or business within Nepal, such company shall make an application, accompanied by the prescribed fees, to the Office for the cancellation of its registration.

It shall also submit, along with the application, evidence confirming that there is no liability due and payable by such company to any person, organization, governmental or non-governmental body in Nepal. Other procedures regarding cancellation of registration and liquidation of foreign companies shall be as prescribed in the companies' legislation.

3. Industry Registration

After obtaining approval for foreign investment, the industry is required to be registered with the DOI within 35 days. If the registration cannot be done within the stipulated time, the investor will have to apply for the extension of the validity period. Therefore, once the company is incorporated, the investor has to apply for registration of industry at DOI, filling a prescribed form along with following documents.

1. A copy of the foreign investment approval letter issued by the Foreign Investment Section, DOI.
2. A copy each of the Certificate of Incorporation, Memorandum of Associations, and Article of Association of the company.
3. Environmental Impact Assessment (EIA) Report or Initial Environmental Examination (IEE) Report.

4. Permanent Account Number (PAN) Registration

Any business entity, including industry that has to pay income tax or Value Added Tax (VAT) should obtain the PAN. The industry has to be registered with the District Office of the Inland Revenue Department or Inland Revenue Office (IRO) before its operation. In order to get PAN, there is no fee or deposit imposed. PAN registration is essential for buying land, building and clearance of goods at custom office. Therefore, it is recommended that the companies are registered with IRO immediately after

incorporation. For this, the company has to apply with an application form as shown in Income Tax Act and Rules along with the following documents:

1. Copy of the certificate of incorporation
2. Copy of the memorandum and articles of incorporation
3. Copy of the citizenship certificate (or passport in case of foreign national) who signs the application
4. Two passport size photo of the individual who signs the application
5. Hand drawn sketch of the business location of the applicant
6. Power of attorney, if applicable.

The company has to submit the balance sheet and profit and loss statement at the end of each fiscal year for assessment of income tax.

5. Tax on Non-resident

Normally, tax on service fees etc. earned by Non-Resident by providing service in Nepal is collected through withholding tax deducted by the resident person. But where both service provider and recipient of service are non-resident, there is no withholding tax on service fee payment and the recipient is required to submit income tax return and pay tax on income from service provided in Nepal. The non-resident may create a permanent establishment if it provides service in Nepal for more than 90 days in a 365 days period. Such permanent establishment of non-resident is treated as resident taxable entity, independent from the non-resident parent company and taxed as resident person.

Foreign airlines operating in Nepal pay turnover based income tax for sales arising from travel of person and goods originating from Nepal (Excluding transits) and for sales of tickets from Nepal for travel outside Nepal (other than originating from Nepal). Other income of the airlines are treated as normal income and taxed accordingly.

6. Dividend Distribution & Profit Repatriation

Dividends received by resident tax payers from non-residents are taxed as normal income.

Profit repatriated by permanent establishment to its parent company is subject to 5% withholding tax.

7. Compliance with Environmental Regulations

Government of Nepal is committed to the industrialization of the country with due care to the environment. Accordingly, GON has enacted Environmental Protection Act (EIA) 1997 and Environmental Protection Regulation (EPR) 1997. Any industry (including capacity expansion or

diversification scheme of existing industry) may have to get approval on the environmental assessment reports such as Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) prior to industry registration

Hope you find the article useful. Thank you for reading-KB Chitracar& Co, Chartered Accountants