



Legal Update

Abroad Investment for Nepalese IT industries

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Background

Central Bank of Nepal specifies the amount and conditions for abroad investment

The investments that can be done by Nepalese persons (including entities such as companies) in foreign countries (**the “Abroad Investment”**) used to be primarily governed by Overseas Investment Prevention Act, 1964 (**“OIPA”**). While Section 3 (1) of the OIPA made a general restriction on Nepalese persons to invest abroad, Sub-section (2) of Section 3 of OIPA provided an enabling clause on the basis of which the Government of Nepal (**“GON”**) could exempt specific forms of abroad investment from such restriction by issuing a notice in the Nepal Gazette, along with the limitations, timeline and other necessary conditions of such exemption.

Recently, certain amendments have been made to Foreign Exchange (Regulation) Act, 2019 (**“FERA”**) via Ordinance to Amend Some Nepal Laws Relating to Improvement of Financial as well as Business Environment and Investment Increment, 2081. The Ordinance has already been passed by the Federal Parliament and incorporated in the Act. These amendments have broadened the scope of Abroad Investment by incorporating the provisions relating to Abroad Investment in FERA as well.

On the basis of the amendments to FERA, Nepal Rastra Bank, the Central Bank of Nepal (**“NRB”**) has also introduced amendments to the Foreign Investment and Foreign Loan Management By-Laws, 2021 (**“By-laws”**) on 18 June 2025 (4 Ashad 2082), setting out key regulatory provisions applicable to the Abroad Investment. Therefore, as of this date, the major laws regulating Abroad Investment include: a) OIPA, b) FERA, and c) the NRB By-laws.

This legal update provides a general overview of the amendments to FERA, and the corresponding regulatory measures introduced by NRB through the revised By-laws, with a particular focus on Abroad Investment by the Information Technology (IT) Industry.

Overview of Amendments to FERA

The amendments to FERA have introduced additional legal provisions regarding the regulation of Abroad Investment. The major provisions are briefly highlighted below:

Eligibility to make abroad investment

1. Definition of Abroad Investment / Forms of Permitted Investments:

Section 10A of FERA has stated that the following company or enterprise incorporated in Nepal shall be eligible for abroad investment:

- Industry granted with concession to invest abroad as per the notice pursuant to Sub-section (2) of Section 3 of OIPA.
- **Industry falling under the category of “Information Technology Industry” pursuant to Industrial Enterprise Act, 2076,**
- Foreign Currency from Technology Transfer may be invested in a limited liability partnership, firm, investment fund, company or similar nature of entity established or registered abroad pursuant to Sub-section (2) Section 7(A) of Foreign Investment and Technology Transfer Act, 2075.

Based on earlier legal provisions, only such entities prescribed by the GON through a notice in the Nepal Gazette could make certain abroad investment as per such Notice. However, since the introduction of Section 10A through the recent amendment to FERA, such official notice in the Nepal Gazette is no longer required, and the IT industries can directly invest abroad subject to the provisions regarding forms of permissible investments in FERA, and other conditions prescribed by the NRB By-laws as discussed below.

2. Definition of Abroad Investment / Forms of Permitted Investments:

Section 2(G4) of FERA outlines the definition of Abroad Investment setting forth the forms of abroad investment that may be done by Nepalese companies. Rule 2(L(a)) of the By-laws also adopt the same definition. Therefore, the permissible forms of Abroad Investment that can be made as per the Amendment include:

- **Equity Investment in Unlisted Foreign Entities**

Investment made on shares or through purchase of shares of foreign entities not listed in Stock Exchange such as limited liability partnerships, firm, investment funds, company or other similar entities with limited liability (it seems that the outward investment may be made only through equity investment in entities with limited liability)

- **Equity Investment in Listed Foreign Entities**

Similar investment through shares in foreign entities listed in Stock Exchange not exceeding 20% of paid-up capital of such entity, (however, such limit shall not be applicable for Nepalese citizens to the extent that they have made such investment through their income while residing in such country)

Establishment of Foreign Offices: Investment made by Company or Enterprise incorporated in Nepal to operate its branch or liaison office in foreign country,

- **Foreign Bank Deposits**

Amount deposited by the Company or Enterprise incorporated in Nepal into Deposit Accounts of Foreign Banks,

Reinvestment of Returns: Re-investment of amount received from the investment made through process (a) and (b) above.

3. Employee-share scheme:

Nepalese citizens employed by a foreign parent company or its subsidiary may participate in Employee Stock Option Plans. Such Nepalese persons may hold such shares, and generate income from them. However, no convertible foreign currency may be transferred from Nepal to acquire such shares. If an IT Industry is a subsidiary of a foreign holding company, the employees of such IT industry can also be eligible for such ESOPs.

4. Regulatory Role of NRB:

The amended provisions of FERA authorize NRB to issue public notices prescribing conditions, ceilings, and procedures for Abroad Investment.

Amendments to the By-laws

Foreign Exchange Facility for IT Industry

As afore-mentioned, NRB has introduced the foreign exchange facility as per the regulatory roles and powers assigned to it through Sub-section (3) of section 10(A) of FERA. Rule 9A of the By-law has iterated the overall regulation for the Abroad Investment setting out several conditions such as eligibility criteria for the Abroad Investment, prescribed limit and conditions to be fulfilled for foreign exchange facility for the Abroad Investment, approval requirements, reporting obligations, and. The IT Industries seeking to make investments abroad, should therefore, consider the following regulations as prescribed by the NRB By-laws.

Eligibility Criteria:

The IT Industry should meet the following criteria to be eligible to invest abroad:

- **Registration Criteria**

The IT Companies should be registered as an IT Industry¹ pursuant to Industrial Enterprises Act, 2076 in order to be eligible to make the Abroad Investments.

- **Minimum Export Criteria**

In order for an IT Industry to be eligible for the Abroad Investment, such IT industry must have earned foreign currency by exporting IT-related services for at least last three fiscal years.

Ceiling of Maximum Abroad Investment

The maximum amount of foreign currency that an IT industry in Nepal may utilize for the Abroad Investment is subject to a strict ceiling. The By-laws have made two distinct conditions regarding the Foreign Exchange Facility which determine the maximum amount that can be invested abroad.

- **Ceiling based on Paid-up Capital:** The By-laws maintain that the abroad investment shall not exceed the paid-up capital of the IT industry.
- **Ceiling based on Maximum Foreign Exchange Facility:** Secondly, the Bye-laws stipulate that the maximum amount that an IT Industry may utilize through Foreign Exchange Facility for abroad investment will be the lower amount of the following:
 - 50% of the average foreign currency earned by the company from the export of IT related services over the preceding three fiscal years, or
 - USD 1 million, or its equivalent in another convertible foreign currency.

To synthesize, the maximum ceiling of the Abroad Investment that can be made by an IT Industry will be subject to: (a) its paid-up capital, (b) the export ratio of three preceding fiscal years, and (c) the maximum cap of USD 1 million. In any event, IT industry cannot invest more than USD 1 million or its equivalent convertible currency or its total paid-up capital as the

¹ Schedule 7, Part A of the Industrial Enterprise Act, 2075 ("IEA") has enlisted industries that are incorporated within the definition of IT industry. It should be noted that a company is first registered with the objective of operating IT related business, which is then registered as an "IT Industry as an IT Industry within the purview of IEA. The term "Industry" and "Company" are used interchangeably herein for the sake of convenience even though a separate registration requirement is necessary for a Company to be characterized as "Industry".

Abroad Investment. If 50% of the company's average foreign currency earning over the last three years is less than USD 1 million, the company will be limited to that lower amount.

Approval Requirements

NRB is the regulatory body for such foreign exchange facility. Hence, in order to receive such foreign exchange facility, an application with the attachments of documents mentioned in Annex-I herein is required to be submitted to the Foreign Exchange Facilitation Unit. Within fifteen (15) days of receipt of such application, NRB is required to make its decision and inform to the applicant.

Reporting Requirements

The IT Industries who have invested abroad as per the By-laws are required to comply with the following reporting requirements:

- (a) Submit audited financial statements concerning such investments within six months following the end of the fiscal year, as per both the fiscal calendar of the host country and that of Nepal.

**(In cases where the laws of the host country do not mandate an audit, the entity may submit unaudited financial statements, provided they are accompanied by documentary evidence verifying the exemption from audit requirements. Submission of such unaudited statements shall be deemed compliant with this provision.)*

- (b) Repatriate to Nepal, through the banking system, any income earned from foreign investments or amounts received upon repatriation of such investments.
- (c) Submit investment related data/information to NRB as and when requested.

Consequences of Non-Compliance

If abroad investment is made by obtaining exchange facilities under the By-law and such investment is found to be involved in foreign exchange misappropriation or to be in violation of prevailing laws, action shall be taken in accordance with the prevailing laws.

Additional Conditions for Foreign Exchange Facility

Although the FERA or the By-laws have not made substantive provisions regarding the eligibility criteria for Abroad Investment other than as discussed in Paragraph 11 above, NRB

seems to have maintained additional conditions in the Annex 16A. in the By-laws, which enlist required documents and conditions to be fulfilled in order to be eligible for foreign exchange facility for Abroad Investment. Therefore, an Industry should also be meet the following conditions to invest abroad:

- (a) There should be no overdue loan in any bank and financial institution of Nepal for which the repayment timeline has exceeded.
- (b) Should be able to prove **that the industry, its shareholders, Board Members, Chief Executive Officer (CEO), Company Secretary, and beneficial owners are not blacklisted by the Credit Information Bureau (CIB).**

Further, the Shareholders, directors, CEO, company secretary, or beneficial owners of such industry:

- (a) If convicted of a criminal offence involving moral turpitude, should have completed five years since serving a sentence for such offence.
- (b) If convicted of corruption or fraud, should have completed five years since serving a sentence for crime.
- (c) Should not have been proven guilty of dishonesty or having mala fide intention in dealings with banks or financial institutions
- (d) Should not have been convicted for money laundering or financing of terrorist activities
- (e) Should not have not been declared insolvent or involved in forced debt settlement.

While the amendments to the By-law have introduced provisions permitting IT industries to pursue investment abroad, the applicable regulatory framework continues to reflect restrictive measures accompanied by substantial compliance requirements.

Annex I: Required Documents

For IT industry registered as per the prevailing laws of Industrial Enterprise

S.No.	Required Documents
1.	Copy of Industry registration certificate
2.	Copy of PAN certificate
3.	Latest Audit Report
4.	Latest Tax Clearance Certificate
5.	Copy of Memorandum of Association ('MOA') and Articles of Association ('AOA')
6.	Copy of updated shareholder and director's register book
7.	Self-declaration of industry: 'Has no overdue loans with any bank or financial institutions in Nepal'
8.	Copy of the Board Minute or authorized official of the institution approving the request for foreign exchange facility
9.	Copy of the Board Resolution or authorized official's resolution declaring compliance with all applicable national and international legal provisions and assuming full responsibility in case of non-compliance.
10.	Details of the beneficiary abroad to receive the foreign exchange amount including name, address and bank account information.
11.	<p>In the case of investment in an existing foreign industry:</p> <ul style="list-style-type: none"> • Copy of the registration certificate of the foreign industry • Most recent audited financial report of the foreign industry • Notarized documents verifying the beneficial ownership <i>(Not applicable for investments in publicly listed companies in the securities market)</i> • If the laws of the foreign country do not require auditing, unaudited financial statements may be submitted with proof of audit exemption.
12.	<p>Proof that the industry, its shareholders, Board Members, Chief Executive Officer (CEO), Company Secretary, and beneficial owners are not blacklisted by the Credit Information Bureau (CIB).</p> <p><i>*(Documents must be issued within six months prior to the submission date)</i></p>
13.	In case of any criminal background reported by the police for shareholders, directors, CEO, company secretary, or beneficial owners, a certificate proving that five years have passed since the completion of the sentence
14.	<p>Self-declaration confirming that shareholders, directors, CEO, company secretary, or beneficial owners:</p> <ul style="list-style-type: none"> • Are Nepali citizens aged 18 years or above • Are of sound mental health • Have not been declared insolvent or involved in forced debt settlements

	<ul style="list-style-type: none">• Have been cleared from any banking or financial blacklist for at least three years if previously black-listed• Have fulfilled all tax obligations under prevailing laws• Have completed five years since serving a sentence for a morally reprehensible criminal offense• Have completed five years since serving a sentence for corruption or fraud• Are not serving any public or government office• Have not been proven guilty of dishonesty or having mala fide intention in dealings with banks or financial institutions• Have not been convicted for money laundering or financing of terrorist activities <p><i>(This declaration must be duly submitted with the application.)</i></p>
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